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TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1889.

No. 120.

WILLIAM ROEMER, APPELLANT,

vs.

THOMAS B. PEDDIE AND GEORGE B. JENKINSON.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF NEW YORK.

FILED OCTOBER 5, 1886.

Roemer vs Headley
do Kupfer
do Jenkinson

accession 23901

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1 The President of the United States of America to [L. S.] Thomas B. Peddie and George B. Jenkinson, Greeting:

You are hereby commanded that you and each of you personally appear before the judges of the circuit court of the United States of America for the southern district of New York, in the second circuit court, in equity, on the first Monday of September, A. D. 1884, wherever the said court shall then be, to answer a bill of complaint exhibited against you in the said court by William Roemer, and do further and receive what the said court shall have considered in that behalf; and this you are not to omit under the penalty on you and each of you of two hundred and fifty dollars.

Witness Honorable Morrison R. Waite, Chief Justice of the Supreme Court of the United States, at the city of New York, on the 16th day of July, in the year one thousand eight hundred and eighty-four, and of the Independence of the United States of America the one hundred and ninth.

TIMOTHY GRIFFITH, *Clerk.*

BRIESEN & STEELE,
Complainant's Sol'rs.

The defendants are required to enter appearance in the above cause, in the clerk's office of this court, on or before the first Monday of September, 1885, or the bill will be taken *pro confesso* against them.

T. G., *Clerk.*

2 (Endorsed:) I hereby certify that on the 17 day of July, 1884, at the city of New York, in my district, I personally served the within subpœna upon the within-named George B. Jenkinson by exhibiting to him the within original and at the same time leaving with him a copy thereof. Dated July 18, 1884. (S'g'd) Joel B. Erhardt, U. S. marshal, S. D. N. Y.

3 Circuit Court of the United States for the Southern District of New York.

WILLIAM ROEMER
vs.
THOMAS B. PEDDIE and GEORGE B. JENKINSON, Doing Business as T. B. Peddie & Co. } In Equity.

To the honorable the judges of the circuit court of the United States for the southern district of New York:

William Roemer, doing business in Newark, in the county of Essex and State of New Jersey, and a citizen of the United States, brings this his bill of complaint against Thomas B. Peddie and George B. Jenkinson, doing business as copartners under the firm name and style of T. B. Peddie & Co., in New York, in the county and State of New York, and in Newark, in the county Essex and

State of New Jersey, and who are, as your orator is informed and believes, citizens of the United States; and thereupon your orator complains and says—

That your orator was and is the original and first inventor
4 of an improvement in combined locks and handles for traveling bags, fully described in the letters patent hereinafter mentioned, and which had not been known or used before your orator's said invention, and which was not, for more than two years before your orator's application for a patent, as hereinafter mentioned, in public use or on sale with his consent or allowance.

And your orator further shows unto your honors that your orator, being so as aforesaid the first inventor and discoverer of said improvement in combined locks and handles for traveling bags, did, on the 18th day of September, 1877, upon due application therefor, obtain letters patent of the United States for said invention, in due form of law, under the seal of the Patent Office of the United States, signed by the Secretary of the Interior and countersigned by the Commissioner of Patents of the United States, bearing date the day and year last aforesaid and numbered 195,233, whereby there was granted and secured to your orator, — heirs, administrators, or assigns, or intended so to be, for the term of seventeen years from and after the date of said letters patent, the full and exclusive right and liberty of making, constructing, using, and vending to others to be used, the said invention and improvement, as set forth in said letters patent, which, or a duly certified copy of which, is ready here in court to be produced.

And your orator further shows unto your honors that by virtue of the premises your orator became and now is the sole and exclusive owner of said letters patent and the inventions and improvements described therein, and of all the rights and privileges granted and secured or intended to be granted and secured thereby, and that since he became the owner thereof as aforesaid he has invested and expended large sums of money and has been to great trouble in and about said invention and for the purpose of carrying on the business of manufacturing and selling said combined locks and handles for traveling bags and making the same profitable to himself and useful to the public, and that said invention has been and is of great benefit and advantage, and that large quantities of said combined locks and handles for traveling bags were made according to
5 said invention and sold by your orator to the great advantage of the public, and that the public have generally acknowledged and acquiesced in the aforesaid rights of your orator, and your orator believes that he will realize and receive large gains and profits therefrom if infringements by said defendants and their confederates shall be prevented.

And your orator further shows unto your honors that on or about the 2d day of March, 1880, your orator filed his bill of complaint in the United States circuit court for the district of New Jersey against David Neumann and Carl Neumann; that in his said bill your orator complained of the infringement by said defendants of letters

patent No. 195,233, being the same letters patent on which this present suit is brought, and prayed for an injunction and accounting against said defendants; and your orator further shows unto your honors that your orator's said bill of complaint having been duly filed in said circuit court for the district of New Jersey, and the subpœna served on said defendants, and the said defendants having entered their appearance, thereafter, on due proceedings had, a decree was entered December 8, 1880, sustaining the validity of said letters patent and the rights of your orator thereunder, and for an accounting and perpetual injunction against said defendants.

And your orator further shows unto your honors that on or about the 9th day of September, 1881, your orator filed his bill of complaint in the United States circuit court for the southern district of New York against Edward Simon & Brothers; that in his said bill your orator complained of the infringement by said defendants of letters patent No. 195,233, being the same letters patent on which this present suit is brought, and prayed for an injunction and accounting against said defendants.

And your orator further shows unto your honors that the subpœna was served on the said defendants; that thereafter the said defendants appeared and filed their answer, and afterward filed an amended answer; that after issue was joined proofs were taken at great length on the part of the complainant and on the part of the defendants; that said suit was brought to a final hearing before his honor
6 Judge Wheeler, and a thorough and exhaustive argument had before him—Frederick H. Betts, Esq., appearing for the defendants and Arthur v. Briesen, Esq., appearing for the complainant; that, after hearing said argument, his honor Judge Wheeler held the said cause under advisement for about six months, and finally rendered a decision sustaining the validity of the said patent and ordering that an interlocutory decree for an injunction and account, with costs to the complainant, be entered in said suit; and that such decree was duly entered and said injunction was issued and served on the defendants, and the accounting in said suit is now being proceeded with.

Yet the said defendants, well knowing the premises and the rights secured to your orator as aforesaid, but contriving to injure your orator and to deprive him of the benefits and advantages which might and otherwise would accrue unto your orator from said invention, after the issuing of the letters patent as aforesaid and before the commencement of this suit did, as your orator is informed and believes, without the license or allowance and against the will of your orator and in violation of your orator's rights, and in infringement of the aforesaid letters patent, at the said city of New York and at other places, unlawfully and wrongfully and in defiance of the rights of your orator, make, construct, use, and vend to others to be used the said invention, and did make, construct, use, and vend to others to be used combined locks and handles for traveling bags made according to and employing and containing said invention; and your orator charges it to be a fact that said defendants and their confederates still continue so to do, and that they are threatening

to make the aforesaid combined locks and handles for traveling bags in large quantities and to supply the market therewith and to sell the same.

All in defiance of the rights acquired by and secured to your orator as aforesaid and to your orator's great and irreparable loss and injury, and by which your orator has been and still is being deprived of great gains and profits which he might and otherwise would have obtained, but which have been received and en-
7 joyed and are being received and enjoyed by the said defendants by and through their aforesaid unlawful acts and doings.

And your orator further shows unto your honors, on information and belief, that said defendants have made and sold and caused to be made and sold large quantities of said combined locks and handles for traveling bags, and have a large quantity on hand which they are offering for sale, and have made and realized large profits and advantages therefrom, but to what extent and how much exactly your orator does not know, and prays a discovery thereof; and your orator says that the use of the said invention by said defendants and their preparation for and avowed determination to continue the same, and their other aforesaid unlawful acts in disregard and defiance of the rights of your orator, have the effect to and do encourage and induce others to venture to infringe said patent in disregard of your orator's rights.

And your orator further shows unto your honors that he has caused notice to be given to said defendants of said infringements and of the rights of your orator in the premises, and requested said defendants to desist and refrain therefrom, but said defendants disregarded said notice and refused to desist from said infringements and still continue to make and sell said combined locks and handles for traveling bags without right.

And your orator prays that said defendants, Thomas B. Peddie, George B. Jenkinson, and each of them and their and each of their servants, agents, attorneys, and workmen and each and every of them may be restrained and enjoined provisionally and perpetually by the order and injunction of this honorable court from directly or indirectly making, constructing, using, vending, delivering, working, or putting into practice, operation, or use or in anywise counterfeiting or imitating the said invention or any part thereof, or any combined locks and handles for traveling bags made in accordance therewith or like or similar to those which they heretofore made, and that the said defendants may be decreed to pay the profits unlawfully obtained by them by reason of the aforesaid infringement and the damages thereby suffered by your orator and the
8 costs of this suit, and that your orator may have such further relief or such other relief as to this honorable court shall seem meet and as shall be agreeable to equity.

And forasmuch as your orator can have no adequate relief, except in this court, to the end, therefore, that the said defendants may, if they can, show why your orator should not have the relief hereby prayed, and may, upon their oath, according to their best and utmost knowl-

edge, remembrance, information, and belief, full, true, direct, and perfect answers make to the premises and to all the several matters hereinbefore stated and charged as fully and particularly as if severally and separately interrogated as to each and every of said matters, and may be compelled to account for and pay to your orator the profits by them acquired and the damages suffered by your orator from the aforesaid unlawful acts—

May it please your honors to grant unto your orator the writ of injunction, as well provisional as perpetual, issuing out of and under the seal of this honorable court, commanding, enjoining, and restraining the said defendants, Thomas B. Peddie, George B. Jenkinson, and their and each of their servants, agents, attorneys, and workmen and each and every of them as is hereinbefore in that behalf prayed.

May it please your honors to grant unto your orator the writ of subpœna issuing out of and under the seal of this honorable court, directed to the said defendants, Thomas B. Peddie and George B. Jenkinson, commanding them by a certain day and under a certain penalty to be and appear in this honorable court, then and there to answer the premises and to stand to and abide such order and decree as may be made against them.

And your orator will ever pray, etc.

WILLIAM ROEMER.

BRIESEN & STEELE,
Comp't's Sol's.
A. v. BRIESEN, *Of Counsel.*

9 UNITED STATES OF AMERICA,
Southern District of New York, } *ss:*
City and County of New York,

On this 30th day of June, 1884, before me personally appears William Roemer, the above-named complainant, who, being by me first duly sworn, deposes and says that he has read the foregoing bill of complaint subscribed by him and knows the contents thereof, and the same is true of his own knowledge, except as to the matters therein stated on information and belief, and as to those matters he believes it to be true.

WILLIAM ROEMER.

Subscribed and sworn to before me this 30th day of June, 1884.
[SEAL.] CHARLES G. M. THOMAS,
Notary Public, Kings Co., N. Y.

Certificate filed in N. Y. Co.

(Endorsed:) United States circuit court, south. district of N. Y. William Roemer *vs.* Thomas B. Peddie *et al.* Bill in equity. Briesen & Steele, complainant's solicitors, 229 Broadway, New York. U. S. circuit court. Filed July 16, 1884. Timothy Griffith, clerk.

10 Circuit Court of the United States for the Southern District of New York.

WILLIAM ROEMER
vs.
THOMAS B. PEDDIE and GEORGE B. JENKINSON.

SIR: Please enter our appearance as solicitors for the above-named defendants in the above-entitled suit.

Aug. 29th, 1884.

Yours respectfully,

BETTS, ATTERBURY & BETTS,
120 *Broadway, New York City.*

To Timothy Griffith, Esq., clerk of the U. S. C. c't, south. dist. of New York.

(Endorsed:) Circuit court of the United States, southern district of New York. In equity. William Roemer *v.* Thomas B. Peddie and George B. Jenkinson. Notice of appearance. Betts, Atterbury & Betts, solicitors for defendant-, 120 Broadway, New York city. U. S. circuit court. Filed Aug. 30, 1886. Timothy Griffith, clerk.

11 Circuit Court of the United States, Southern District of New York.

WILLIAM ROEMER
against
THOMAS B. PEDDIE and GEORGE B. JENKINSON. } In Equity.

The answer of Thomas B. Peddie and George B. Jenkinson, respondents, to the bill of complaint exhibited against them by the above-named complainant, William Roemer.

The respondents, now and at all times hereafter saving and reserving to themselves all and all manner of benefit of exception which may be had or taken to the manifold errors, uncertainties, imperfections, and insufficiencies of the said bill of complaint, for answer thereto, or to so much as they are advised it is material or necessary to make answer to, answering, say:

That upon information and belief alone they admit that letters patent of the United States were issued to persons of the name alleged in this bill and at the date therein referred to for alleged invention therein referred to, but whether any of the provisions or requirements of law were duly or at all complied with they have no knowledge or information and cannot set forth, and leave the complainant to make such proof thereof as he may be advised.

And the respondents, further answering, deny that they
12 have ever at all in any way infringed upon the aforesaid letters patent, or that they are now infringing upon the same or intend so to do, either by making, using, or vending to others to be used or otherwise the said invention, as alleged in the bill of com-

plaint or otherwise, or that he has made any profit therefrom or caused any damage to the complainant thereby.

And the respondents, further answering, say that they are advised, and therefore aver, that said letters patent and each and every part thereof are void and of no effect in law, because that the specification accompanying the same is not in such full, clear, and exact terms as to enable any person skilled in the art to which it pertains or with which it is most nearly connected to practice the alleged invention, and because the said patentee did not therein give to the public the best and utmost of their knowledge as to the making and using said invention, and because that for the purpose of deceiving the public the description and specification filed by the said patentee in the Patent Office were made to contain less than the whole truth relative to said invention or discovery or more than is necessary to produce the desired effect.

And the respondents, further answering, say that said letters patent and each and every part thereof are void and of no effect in law, because that he, the said William Roemer, surreptitiously and unjustly obtained the patent for that which was in fact invented by others who were using reasonable diligence in adapting and perfecting the same.

And the respondents, further answering, say that they are informed and believe that the said letters patent and each and every part thereof are void and of no effect in law, because that the said alleged invention had been, prior to said alleged invention or discovery thereof, patented by the following-named persons in and by the following-named patents: U. S. letters patent of Daniel Read, Oct. 22, 1872, No. 132,412; U. S. letters patent of William Simon, May 2, 1876, No. 177,020; U. S. reissued letters patent of William Simon, June 21, 1881, No. 9772; U. S. letters patent of Wil-
13 liam Roemer, May 14, 1877, No. 190,907; U. S. letters patent of H. Willard, Dec. 20, 1870, No. 110,412; U. S. letters patent for design of Crane and Trough, Dec. 12, 1865; registration in Great Britain by Samuel Fisher, No. 293,537, August 14th, 1875, and No. 298,257, February 5, 1876.

And the respondents, further answering, say that said letters patent and each and every part thereof are void and of no effect in law, because that the said alleged invention described in the letters patent set forth in the complaint herein, or substantial and material parts thereof, had, prior to the alleged invention of said Roemer, been described or shown in certain designs or patents or publications granted or registered in the Kingdom of Great Britain, and published at London, England, to wit, in the registration of Samuel Fisher, of London, No. 293,537, dated August 14, 1875, and No. 298,257, dated Feb. 5, 1876.

And the respondents, further answering, say that the said letters patent of William Roemer are void and of no effect, because that the things patented therein, or substantial or material parts thereof, had been sent into the United States by said Samuel Fisher, of London, and that traveling bags made in accordance with said publications or patents of said Fisher had been, prior to said alleged inven-

tion, imported into this country, and that one Gustav Bernheim, of and at the city of New York and at London, England, and at Newark, New Jersey, had prior knowledge and use of the alleged invention of said Roemer at said places, respectively.

And the respondents, further answering, say that, in view of said publications, importation, and prior knowledge and use, and in view of the other matters and things alleged in this answer and introduced in proof in this case, and in view of the true meaning and construction of the said letters patent of William Roemer mentioned in the bill, that there is and was no patentable invention exercised in making the thing patented by said Roemer in the letters patent aforesaid, and the defendants have not infringed upon the same.

14 And the respondents, further answering, say that the said letters patent set forth in the bill and each and every part thereof are void and of no effect in law, because that the said alleged inventor, William Roemer, was not the original and first inventor or discoverer of any material or substantial part of the said alleged invention or discovery; but that the same, and every material and substantial part thereof, had been previously invented and used by and known to the following persons at the places set opposite their names, respectively, such persons now residing, to the best of the respondents' knowledge and belief, at the places respectively specified:

Gustav Bernheim, of the city of New York, at the city of New York, and at London, England, and at Newark, New Jersey, and elsewhere.

Samuel Fisher, of London, England, at London, England, and elsewhere.

George Havell, of Newark, New Jersey, at Newark, New Jersey, and New York city, and elsewhere.

Isidore Levi, of Newark, New Jersey, at Newark, New Jersey, and New York city, and elsewhere.

D. S. Hammond, of the city of New York, at the city of New York.

Bernard Conlan & Co., of the city of Newark, New Jersey, at Newark, New Jersey.

Thomas B. Peddie and George B. Jenkinson, of Newark, New Jersey, at Newark, New Jersey.

And the respondents, further answering, say that the said letters patent and each and every part thereof are void and of no effect in law, because that the said alleged invention, with the knowledge, acquiescence, and consent of said inventor and patentee, had been in public use and on sale in this country for more than two years before the said inventor's and patentee's application for a patent therefor, and that the same had been abandoned to the public by the said inventor and patentee.

And the respondents, further answering, say that in said

15 suit brought in the district of New Jersey by this complainant against David Neumann and Carl Neumann, as set forth in the bill of complaint herein, that said defendants Neumann made no defense in said suit and took no steps therein, except entering their appearance, and that the decree therein was entered on de-

fault of said defendants; that said defendants Neumann have not ceased manufacturing locks such as those for the manufacture of which said suit was brought, but are openly and notoriously manufacturing such locks without let, hindrance, or molestation on the part of the complainant herein.

That this defendant was not a party to said suit nor interested therein in any way and is not enjoined by any decree therein.

And the respondent denies that said letters patent or the alleged rights of the complainant have been ever at all acknowledged or acquiesced it [in]; but, on the contrary, that the said alleged invention has been publicly used in defiance and disregard of any alleged rights of the complainant.

And these respondents, further answering, say that, as to all the allegations respecting the suit by this complainant against Edward Simon and Brothers, these respondents, except from said allegations, are not aware of any of the matters therein stated, except that there was such suit, and that it was decided in favor of the complainant upon some grounds unknown to this respondent, and that respondents were not a party to said suit and are not in any way bound by the proceedings or decision therein.

And the respondents deny all and all manner of unlawful combination by the said bill charged, without this, that there is any other matter, cause, or thing in the said bill of complaint contained (material or necessary to make answer unto and not herein and hereby well and sufficiently answered, confessed, traversed, and avoided or denied) true, to the knowledge or belief of the respondents; all which matters and things the respondents are ready and willing to aver, maintain, and prove as this honorable court shall direct, and humbly pray to be hence dismissed with their
16 reasonable costs and charges in this behalf most wrongfully sustained.

THOS. B. PEDDIE.
GEO. B. JENKINSON.

BETTS, ATTERBURY & BETTS,
Respondents' Solicitors.
—— ——, *Of Counsel.*

UNITED STATES OF AMERICA, }
District of New Jersey, County of Essex, } *ss:*

On this 24th day of October, 1884, before me came George B. Jenkinson, the above-named respondent, and, being by me duly sworn, did for himself depose and say that he had read the foregoing, and that the same is true, of his own knowledge, except as to those matters therein stated to be on information and belief, and as to those matters he believes it to be true.

GEO. B. JENKINSON.

Subscribed and sworn to before me this 24th day of October, 1884.

[L. S.] EDWIN A. RAYNER,
Notary Public.

(Endorsed:) Circuit court of the United States, southern district of New York. William Roemer *vs.* Thomas B. Peddie & George B. Jenkinson. Answer. Betts, Atterbury & Betts, respondents' solicitors, 120 B'dway, N. Y. city. U. S. circuit court. Filed Oct. 28, 1884. Timothy Griffith, clerk.

17 Circuit Court of the United States for the Southern District of New York.

WILLIAM ROEMER
vs.
THOMAS B. PEDDIE and GEORGE B. JENKINSON. } In Equity.

The replication of William Roemer, complainant, to the answer of Thomas B. Peddie and George B. Jenkinson, defendants.

This repliant, saving and reserving unto himself now and at all times hereafter all and all manner of benefit and advantage of exception which may be had or taken to the manifold insufficiencies of the said answer, for replication thereunto says that he will aver, maintain, and prove his said bill of complaint to be true, certain, and sufficient in law to be answered unto, and that the said answer of the said defendants is uncertain, untrue, and insufficient to be replied unto by this repliant, without this, that any other matter or thing whatsoever in the said answer contained material or effectual in law to be replied unto, confessed or avoided, traversed or
18 denied, is true; all which matters and things this repliant is and will be ready to aver, maintain, and prove as this honorable court shall direct, and humbly prays as in and by his said bill he has already prayed.

(S'g'd) BRIESEN & STEELE,
Solicitors for Complainant.

(Endorsed:) United States circuit court, south. district of New York. In equity. William Roemer *vs.* Thomas B. Peddie & *al.* Replication. Briesen & Steele, solicitors for complainant, No. 229 Broadway, New York, N. Y.

(File-mark:) U. S. circuit court. Filed Nov. 6, 1884. Timothy Griffith, clerk.

19 United States Circuit Court, Southern District of New York.

WILLIAM ROEMER, Complainant,
vs.
THOMAS B. PEDDIE and GEORGE B. JENKINSON, Defendants. } In Equity.

Testimony taken in above case, under the 67th rule in equity and the United States statutes in such cases made and provided, before Sam'l R. Betts, United States commissioner, by consent of counsel.

NEW YORK, *January* 28, 1885.

Met pursuant to notice.

Present: A. v. Briesen, Esq., of counsel for complainant, and J. E. H. Hyde, Esq., of counsel for defendants.

JACOB LIMBACHER, a witness called on behalf of complainant, and having been first duly sworn, deposes and says:

My name is Jacob Limbacher; my age is thirty-five years; I reside at No. 458 Fifteenth avenue, Newark, N. J.; I am a wagon builder by occupation.

Q. 1. Please look at the satchel I now show you, and state what you know about it, if anything.

A. On the 10th of June, 1884, I bought this satchel at Mr.
20 Peddie's store, No. 77 Chambers street, New York city, at the price of $1.50, and handed the satchel to Mr. Roemer.

(Counsel for complainant offers the said satchel in evidence and the same is marked "Complainant's Exhibit Peddie Satchel," S. R. B., U. S. com'r, January 28, 1885.)

(Objected to on the ground that no proof that the said exhibit was purchased of the defendants in this case has been given, and it is therefore irrelevant and immaterial.)

Q. 2. Did you get a receipt for the money at the time you bought that satchel?

A. Yes; I got a receipt; I now produce it.

(Complainant's counsel offers said receipt in evidence, and it is marked "Complainant's Exhibit Peddie Receipt," S. R. B., U. S. com'r, January 28, 1885.)

Direct closed.

Cross-Q. 3. How do you know that this is the same satchel that you bought from Mr. Peddie on June 10, 1884?

A. Because I wrote my name in there; there's my name in there, inside the bottom.

Cross-examination closed.

Examination closed.

JACOB LIMBACHER.

Subscribed and sworn to before me this 28th day of January, 1885.

SAM'L R. BETTS,
U. S. Com'r, S. D. of N. Y.

21 Complainant's counsel offers in evidence a printed Patent Office copy of U. S. letters patent granted to William Roemer, of Newark, N. J., for "improvement in combined lock and handle for traveling bags," No. 195,233, dated September 18, 1877, and it is stipulated that the same may be used and considered as a duly certified copy of the drawing and specification of said letters patent, subject to any objections which might be taken to such certified copy.

Also printed copy of the pleadings and proofs for both sides in the suit entitled William Roemer *vs.* Edward Simon, in the United States circuit court for the southern district of New York, and it is stipulated that the same be considered as though duly certified, but any objection to the whole or any part thereof on any ground, except want of certification, is specially reserved to defendant's counsel; the said record is further subject to correction by the original record.

The said record is in two volumes, and the same are, respectively, marked "Complainant's Record" and "Defendants' Record," Roemer *vs.* Simon, S. R. B., United States commissioner, January 28, 1885.

Adjourned to February 5th, 1885, at 11 a. m.

22 NEW YORK, *February* 5, 1885—11 a. m.

Met pursuant to adjournment.

Present: A. v. Briesen, for complainant.

WILLIAM ROEMER, a witness called on behalf of complainant, and having been first duly sworn, deposes and says:

Q. 1. What is your name, age, residence, and occupation?

A. My name is William Roemer; my age is forty-seven years; I reside at Newark, New Jersey; I am the complainant in this cause; I am a manufacturer of traveling bags, frames, trimmings, &c.

(Counsel for complainant states that he waited until 12.45 o'clock for a representative of the defense, and, no one appearing, he requests the officer to adjourn this examination to some other day and to notify the defendants' counsel of the adjournment, so that if the absence of defendants' counsel from this examination was intentional this will appear.)

The examination is accordingly adjourned to February 12, 1885, at 11 a. m.

"COMPLAINANT'S EXHIBIT PEDDIE RECEIPT." S. R. B., U. S. Com'r. January 28, 1885.

U. S. C. C., S. D. of N. Y.

ROEMER *v.* PEDDIE *et al.*

NEW YORK, *June* 10, 1884.

M. Cash bought of T. B. Peddie & Co., 77 Chambers street, 3d door west of Broadway, manufacturers of trunks, traveling bags, ladies' satchels, &c.

Factory, Newark, N. J.
P. O. box 98.
Terms, cash. No allowance for exchange.

1 12-in. club sac..... $1 50

Received payment, June 10, 1884.

T. B. PEDDIE & CO.,
Per J. SPRING.

23 FEBRUARY 12, 1885—11 a. m.

Met pursuant to adjournment.
Present: Counsel as before.

OLIVER DRAKE, a witness called on the part of complainant, and having been first duly sworn, testified as follows:

Q. 1. What is your name, age, residence, and occupation?

A. My name is Oliver Drake; age, 56 years, this month; residence, Newark, N. J.; and occupation, solicitor of patents and
24 expert in patent causes. I have spent the last 20 years entirely in the practice of my profession, in examining into mechanical and patented structures, and have testified in a large number of cases as an expert, and especially in cases in which trunk catches and traveling-bag catches and locks were involved.

Q. 2. Have you read and do you understand complainant's patent in suit, being numbered 195,233, and dated September 18, 1877?

A. I have, and I think I understand the same.

Q. 3. Did you or not testify, as expert witness on behalf of the complainant in the suit entitled William Roemer against Edward Simon and others, in the United States circuit court for the southern district of New York, and is your testimony in that suit contained on pages 136 to 155 of the "Complainant's Record, Roemer *vs.* Simon?"

A. I find upon examining the printed record in the case referred to that such is the fact, and I have a recollection of the same.

Q. 4. Have you also examined the file-wrapper of the Roemer patent in suit, which is contained on printed pages 287 to 298 of "Defendant's Record, Roemer *vs.* Simon," and likewise the Simon

patent No. 177,020, which is referred to in said file-wrapper and printed on pages 243 to 245 of the "Defendant's Record, Roemer *vs.* Simon?"

A. I have examined and think I understand the same.

Q. 5. Will you now please compare Complainant's Exhibit Peddie Satchel with the complainant's patent insuit (195, 233) and state whether or not the same contains the invention which is shown and described in said patent and pointed out in the claim thereof? In giving your answer you may refer, if you choose, to the two models which are now handed you and which are marked, respectively, "Complainant's Exhibit Model No. 1" and "Complainant's Exhibit Model No. 2," and also to the opinion of his honor Judge Wheeler rendered in said suit of Roemer *vs.* Simon, of which a copy is now before you.

(Said models, referred to in the question, are offered in evi-
25 dence and marked "Complainant's Exhibit Model No. 1," S. R. B., U. S. com'r, Feb. 12, 1885. and "Complainant's Exhibit Model No. 2," S. R. B., U. S. com'r, Feb. 12, 1885.)

A. I have examined and compared "Complainant's Exhibit Peddie Satchel" with complainant's patent in suit, and am of the opinion that the said Peddie lock contains the invention described and claimed in said patent. I find, upon examination of "Complainant's Exhibit Model No. 1," that it shows the state of the art prior to the invention described in complainant's patent in suit, No. 195,233. Said model represents substantially what is described and shown in Simon patent No. 177,020, to wit, a flat plate attached to the bottom of the lock case and extending beyond the ends of said lock case, and bent at each end so as to form recesses or grooves for the reception of the handle rings. I observe that this plate subserves no other purpose, so far as I can discern, but for the attachment of the handle rings. Complainant's patent in suit shows notches cut in the sides of a box-shaped structure (forming the lock case) near the ends for the reception of the handle rings, thereby enabling the flat plate shown in the said Simon patent and in Complainant's Exhibit Model No. 1 to be dispensed with. The formation of these notches, *a*, as they are lettered in the patent, in the sides of the box-shaped structure, as shown in said patent, leaves the structure very stiff and strong at the ends and enables the inventor to produce a comparatively inexpensive and at the same time strong and rich looking lock and handle supports. Upon examination of Peddie lock I find the same box-shaped structure substantially and the same notches cut in the sides thereof, near the ends. The only variation that I can discover between said Peddie lock and the device described and shown in the Roemer patent in suit is that the said box-shaped structure, composing the Peddie lock and handle supports, is made in two parts. This difference, however, seems to me to be entirely immaterial and to be a mere question of taste, to give a greater
depth to the structure and make it more massive in appear-
26 ance. The ends of the bottom portion of the structure, which project beyond the ends of the top portion, subserve no other

purpose than to receive and support the handle rings. The construction and result of the notches at the ends are precisely the same as those in the Roemer patent in suit. I find substantially the same form of construction also embodied in "Complainant's Ex. Model No. 2." This is substantially the view taken, as I understand it, by his honor Judge Wheeler in the opinion rendered in said suit of Roemer *vs.* Simon, to which my attention has been directed.

Q. 6. State whether, in your opinion, any, and, if so, what, substantial difference exists (for the purpose of comparison with the invention of Mr. Roemer) between a two-part lock which has the locking mechanism in its lower chamber, like "Ex. Model No. 2," and a two-part lock which has the locking mechanism in the upper chamber, like the Peddie lock, and whether, in your opinion, if the one style of lock, the Peddie lock, is disclaimed in complainant's patent, as the defense contends it is, any invention is shown in the other style of lock.

A. I am unable to discover any difference or to discover any language in the patent which can be construed as a disclaimer in favor of either of the structures (Complainant's Ex. Model No. 2 or Peddie's lock). If such a disclaimer were embodied in the Roemer patent, with reference to such a structure as is shown in the Peddie lock, there would, in my judgment, be no invention embraced in "Complainant's Ex. Model No. 2."

Direct closed.

Cross-examination:

Cross-Q. 7. In your opinion, is the operation and construction of the four locks, "Complainant's Ex. Kupper Frame and Lock," "Complainant's Ex. Headley Satchel," "Complainant's Ex. Peddie Satchel," "Complainant's Ex. Jenkinson Frame and Lock," the same?

(Objected to as not cross-examination.)

A. They are the same in construction and operation; there is a trifling variation in design only.

27 Cross-Q 8. And that variation is an immaterial one, in your opinion, is it not?

(Same objection.)

A. Entirely so.

Cross-Q. 9. And what you have said about the "Ex. Neumann Lock" and the comparisons which were made in regard to that lock apply equally, do they not, to the other three exhibits specified in the seventh cross-question?

(Same objection.)

A. They do.

Cross-Q. 10. You have said that the "Complainant's Ex. Model No. 1" represents the state of the art at the time that Mr. Roemer made the invention described in his patent No. 195,233. Then you consider

that that model shows a lock and bottom plate which are not covered by that patent of Mr. Roemer's, do you not?

A. Yes, sir. That seems also to have been the view taken of the matter by the Patent Office officials, as the Simon patent and device, which is substantially the same as "Complainant's Ex. Model No. 1," were before them when the Roemer patent in suit was granted.

Cross-Q. 11. And that is your opinion also, is it not?

A. Yes, sir; I have so stated.

Cross-Q. 12. Does not "Complainant's Exhibit Model No. 1" consist of two things, a lock-box and a lock-plate?

A. As I understand your question and the fact, there are two things, but the plate which you term the lock-plate really forms no part of the lock proper in "Complainant's Exhibit Model No. 1;" that is to say, that plate could be dispensed with entirely without affecting the operation of the lock at all. This plate subserves no other purpose than to support the handle rings that I can discover; but more than this, this plate, considered as a support for the handles, required more fastenings in order to make it effective than does the device shown in the Roemer patent in suit; it is destitute of that quality which seems to me to impart value to the Roemer invention, namely, strength and rigidity, as well as a massive ap-
28 pearance at the points where the handle rings enter, and which cannot be obtained except by the construction and arrangement shown substantially in the Roemer patent in suit, and unless by the use of a very heavy plate, which would be manifestly objectionable. Roemer, by his construction, is enabled to use very thin metal and at the same time obtain the results which I have named, to wit, strength, rigidity, and a massive appearance.

Cross-Q. 13. Does not "Complainant's Exhibit Model No. 1" consist of a lock-box and an extended bottom plate upon which the lock-box rests and to which it is secured?

A. The model speaks for itself. There certainly is a plate to which the lock case is secured.

(Answer objected to as not responsive, and question repeated.)

Cross-Q. 14. Question 13 repeated.

A. It does, as I have already stated.

Cross-Q. 15. And those two things, namely, a lock-box and an extended bottom plate, to which it is secured and to which the handle rings are fastened, are shown in the patent of William Simon of May 2d, 1876, No. 177,020, are they not?

A. Yes, sir.

Cross-Q. 16. I notice that in "Complainant's Exhibit Model No. 1" there has been placed a little intermediate plate between the locking mechanism and the extended bottom plate; that small, intermediate plate is not shown or described in the Simon patent No. 177,020, is it? And I call your attention particularly to the following words of the specification: "Small *a* represents the lock-plate *j*, which, instead of being made just long enough to receive the lock *c* alone, as is usual, is here made long enough to receive the lock fastening *d* and the ring loops *e*, all together."

A. There is no mention made of such a plate, nor is such plate shown, that I can discover; nor does it appear to be of any importance, as the paragraph immediately succeeding that from which the quotation was made in the question read as follows: "The lock fastening and ring loops may be of any construction desired, as they form no part of this invention."

29 Cross-Q. 17. And is it not your opinion that the words of the specification of the Simon patent which I quoted in the 16th cross-question show that it was Mr. Simon's intention to make his extended bottom plate take the place of and be used for such a small plate as is shown between the lock-box and the extended plate in "Complainant's Model No. 1?"

A. I am unable to come to such a conclusion in view of the quotation which I made in my answer, though such may have been his intention. He says in the specification that his invention "consists, first, in placing the lock, fastening, and ring-loops all upon a single plate, and thereby dispensing with so many different fastenings; second, in the manner of striking up the lock-plate so as to form recesses to receive the ring-loops," &c.

Cross-Q. 18. Is there any function performed by the small plate shown in "Complainant's Exhibit Model No. 1" which cannot be performed by the extended bottom plate of that model?

A. Yes, sir; I think there is; I think the small plate serves to hold the locking mechanism in position and so that the locks may be handled and worked upon without injury, whereas if the extended bottom plate, as it is called, alone were fastened to the case it could not well be handled without serious liability of bending the extended ends of said plate, though such long plate would, if so fastened, perform the function of the small bottom plate, so far as I can see, though I'm not at all certain about that, as the ends of the small plate referred to are bent inward toward the top of the case and seem to form an abutment for the spring.

Adjourned to February 16, at 11 a. m.

FEBRUARY 16—11 a. m.

Present: Counsel for complainant.

In accordance with a written request received from counsel for defendant, an adjournment is taken to Thursday, February 19, at 11 a m.

30 THURSDAY, *February* 19—11 a. m.

Met pursuant to adjournment.

Present: Counsel as before.

Cross-examination of the witness, OLIVER DRAKE, is continued by Mr. HYDE:

Cross-Q. 19. Do you wish it to be finally understood as your opinion that, notwithstanding the use of the words in the specification of the Simon patent No. 177,020, "*a* represents the lock plate, which instead of being made just long enough to receive the lock *c* alone,

as is usual, is here made long enough to receive the lock fastening *d* and the ring loops *e* all together?" Mr. Simon contemplated the use of two plates, one long one and one short one, as in "Complainant's Exhibit Model No. 1."

A. There is nothing in the drawing to indicate that he intended to use any other bottom plate than the one shown, the long one, but I am clearly of the opinion that he did not contemplate the exclusion of such a plate as the short plate in "Complainant's Exhibit Model No. 1."

Cross-Q. 20. If the short intermediate plate in "Complainant's Exhibit Model No. 1" were omitted would not the rest of the structure, in your opinion, be such a lock with extended bottom plate as Mr. Simon describes in that patent?

A. Yes, sir; it would.

Cross-Q. 21. Now, with the exception of the form of the bottom plate and form of ring loops in the "Complainant's Exhibit Peddie Satchel," what is the difference, in your opinion, between that lock and "Complainant's Exhibit Model No. 1" with the small intermediate plate omitted?

A. Replying directly to your question as it is put, the difference between the two is that in "Complainant's Exhibit Model No. 1" the grooves for receiving the handle rings or other devices are formed by bending the bottom plate into the required shape, and in Exhibit Peddie Satchel they are formed by cutting notches in
31 the vertical sides of the box-shaped structure forming the bottom plate.

Cross-Q. 22. Then, except the form of ring loops and the form of bottom plate in those two structures, there is no other difference, is there?

A. No other material difference, except in the results obtained by the difference in the structures of the two—what counsel terms bottom plates.

Cross-Q. 23. It is a very old device, is it not, to strengthen a plate by giving it a flange or angle at its edge?

A. The method of strengthening thin sheet metal by so bending the edges in itself is not new, of course.

Cross-Q. 24. There is nothing of the locking mechanism contained in the under side of the plate of "Exhibit Peddie Satchel" as there is in the "Complainant's Exhibit Model No. 2," is there?

A. Not exactly the same. The locking mechanism in the Peddie lock is contained in the upper section of the structure, but portions of the locking mechanism are attached to the lower section of the structure, or what has been termed the bottom plate, while in "Complainant's Exhibit No. 2" a part of the locking mechanism is contained in the lower section of the structure.

Cross-Q. 25. Do you consider that the Roemer patent in suit, No. 195,233, claims the form of ring loop to retain the handle rings independently of the place where they are put, namely, the lock case?

A. It may be beyond my province to answer or decide that question; it seems to me to involve a question of law.

Cross-Q. 26. In your opinion, is the device described in the claim

of the Roemer patent in suit a lock case having the notched ends specified or is it the form of ring loop described independently of wherever such ring loop may be placed?

A. In my judgment, the Roemer patent in suit describes in the specification and claim the notched sides near the ends of the lock case substantially the same as those shown in the structures "Complainant's Model No. 2" and in "Exhibit Peddie Satchel," to which my attention has been called, and although the lock shown
32 in the said Roemer patent in suit is a structure having an upper and lower section substantially like "Complainant's Exhibit Model No. 2" and "Peddie Satchel," that fact does not seem to me to be material nor does it seem to me to be material whether the locking mechanism is in whole or in part contained in the upper or lower section.

Cross-Q. 27. Then, if I understand you, it is your opinion that it is immaterial whether the form of ring loop described in the Roemer patent is contained in the lock-case (or the part containing the locking mechanism) or the plate upon which the lock-case is placed; is that correct?

A. Yes, sir.

Cross-Q. 28. And both such structures would be equally, in your opinion, the device described and claimed in the Roemer patent in suit; is that so?

A. Yes, sir; having in view the "Complainant's Exhibit Model No. 2" and the "Peddie Satchel."

Cross-Q. 29. What importance, if any, do you attach to the words of the Roemer specification, "This invention relates to a new construction of lock-case for traveling bags, satchels, and the like, whereby the same is made * * * to dispense with an extended bottom plate;" and would a structure having such extended bottom plate be the structure described and claimed by Mr. Roemer in your opinion?

A. That would depend entirely upon the prior state of the art, or to what Mr. Roemer understood to be the prior state of the art, and meant by the words "extended bottom plate." A structure having the extended bottom plate, to which he referred—such a one as is shown in "Complainant's Exhibit Model No. 1" or in the "Simon Patent No. 177,020" would not be the structure described and claimed by Mr. Roemer, in my opinion.

Cross-Q. 30. Then if the form of ring loop shown in the Roemer patent in suit was made in the extended bottom plate of the "Simon Patent No. 177,020," that would not be the structure described and claimed in the Roemer patent in suit, would it?

(Objected to as not cross-examination.)

A. The ring loop shown in the Roemer patent could not
33 be put in the bottom plate shown in the Simon patent; but if the bottom plate in the Simon patent were struck up in the form shown in the "Ex. Peddie Satchel" and the notches cut in the side in the same way it would be, in my judgment, substan-

tially the same structure that is described in the Roemer patent in suit.

Cross-Q. 31. And is that what you think has been done in the case of "Complainant's Ex. Peddie Satchel?"

A. Yes, sir; that is the way I view it.

Cross-Q. 32. And that is why you think the "Complainant's Ex. Peddie Satchel" is an infringement of the Roemer patent in suit, is it not?

A. Yes, sir.

Cross-Q. 33. Have you read the decision of Judge Wheeler in the case of William Roemer *vs.* Peddie *et al.*, and the same complainant *vs.* David Neumann, and one other case, on the motion for a preliminary injunction in those cases, two of said cases being two of those in which you are now giving your testimony?

(Objected to as not cross-examination, and also as no opinion with the title given appears to exist.)

A. I am not sure that I have read it at the present moment; I may have done so.

Cross-Q. 34. I now read you a copy of such decision, which is in the following words:

"United States Circuit Court, Southern District of New York.

WILLIAM ROEMER
vs.
DAVID NEUMANN and Two Other Cases. } In Equity.

The patent of the orator, No. 195,233, is for a lock-case for
34 traveling bags, with notches in its perpendicular sides for the handle rings (Roemer *vs.* Simon, 20 Fed. Rep., 197). The lock-cases alleged to infringe do not have notches in these sides for the handle rings. The notches are in the sides of an extended struck-up bottom plate, which the patent does not cover, but excludes.

Motion for preliminary injunction denied.

HOYT H. WHEELER."

Please state whether or not you agree with Judge Wheeler in that opinion.

(Objected to on same grounds, and the witness is requested not to answer the question in his capacity as complainant's witness.)

A. I could not answer that question with any satisfaction to myself without knowing precisely the nature of the evidence which his honor Judge Wheeler had before him and listening to the arguments which were made at the hearing. I do not think, therefore, it would be fair for me to say that I could not agree with him in the circumstances in which I am now placed. I would not dare to say that my opinion might not be modified or that it might.

Cross-examination closed.

Redirect examination :

Redirect Q. 35. What did you understand by cross-question 9 and he reference therein to "Ex. Neumann Lock," when no such exhibit appears to have been before you ?

A. I have no recollection now in respect to the exhibit referred to.

Redirect Q. 36. At the time that question 9 was asked you did defendant's counsel hand you that model, which is marked "Ex. Neumann Lock ?"

(Objected to, as the witness has just said he did not remember anything about it.)

Question withdrawn in view of objection.

35 Counsel for defendants states that he did not hand said exhibit to the witness at that time or any other time.

(Counsel for complainant calls the attention of the court to the defendant's counsel's objection to redirect question 36 and to the above assertion of defendants' counsel, and protests against defendant's counsel answering a question which he is unwilling to have witness, who is under oath, answer.)

(Defendant's counsel states that the words "Neumann lock" occur in Q. 9 by a verbal mistake either on his part or on the part of the examiner ; that the word should have been "Jenkinson lock," as sufficiently appears by the preceding questions and the witness' testimony, and asked leave of complainant's counsel to correct said error on the record, which was refused.)

(Counsel for complainant replies that he was not present when Q. 9 was asked or answered, and that the request for the so-called correction was not made until after Q. 35 had been put on the record, and that complainant's counsel is not able, in the absence of any certificate from the examiner, to say whether the record is wrong or correct.)

Redirect Q. 37. Referring to your answer to cross-Q. 17, in which you speak of a lock, please look at the model now shown you and state whether that is or not a lock of the kind referred to in that answer.

A. I do not think it is, as I understood your question, if you take the lock and the bottom plate together ; but the lock separate and distinct from the bottom plate is substantially the same kind of a lock.

(Counsel for complainant offers in evidence the model referred to in the last preceding question and answer, and the same is marked "Complainant's Exhibit Model No. 3," S. R. B., U. S. commissioner, February 19, 1885.)

Redirect Q. 38. Then do I understand you also that in your opinion Simon's invention consisted in placing such a lock as "Exhibit Model No. 3" upon a plate like the bottom plate of "model No. 1?"

A. Yes, sir ; that is what he describes as his invention.

36 Redirect Q. 39. Would, in your opinion, if you wholly threw away the lower plate of model No. 3, an operative lock remain or even an operative lock case?

A. I think it is very doubtful.

Redirect Q. 40. What is a lock case, in your opinion?

A. It is a case for the reception of the locking mechanism, and which the same operates, or at least partly so, as it seems to me.

Redirect Q. 41. Is it or not also a case or receptacle which contains and supports the whole locking mechanism?

(Objected to as leading.)

A. If I understand your question I have not so regarded it; heretofore I have looked upon "Complainant's Exhibit Model No. 2," for instance, as embodying a lock case in two sections, upper and lower, and the same way in "Exhibit Peddie Satchel," and yet in a certain sense the section or portion which contains and supports the locking mechanism may also be fitly termed the lock case.

Redirect Q. 42. You have apparently misunderstood my question; I don't care of how many parts the lock case is made so long as it is a lock case, and I only ask to know whether a lock case, in order to be one, must not contain and support the locking mechanism?

(Same objection.)

A. Yes, sir; you are right; that is the idea.

Redirect Q. 43. If the lower plate of model No. 3 supports part of the locking mechanism, is it not part of the lock case; or, in other words, if you threw away that lower plate entirely, with all that it carries, would what remains be a lock case, in your opinion?

(Same objection.)

A. In that view of the case it would not.

Redirect Q. 44. In that view of the case tell me what constitutes the lock case in "Exhibit Peddie Satchel."

A. The upper and lower portions, as I have already testified in several instances. This lower portion in "Exhibit Peddie
37 Satchel," which contains the notches in its vertical sides, has been termed a bottom plate, an "extended bottom plate," the "lower section," &c. I apprehend that these different terms are not material; at least they do not seem so to me.

Redirect Q. 45. I do not quite understand your answers to cross-Q. 31 and 32; if said answers are to intimate that the lower part of the Peddie lock is not part of the lock case, in the same sense as the lower part of model No. 1 is not part of the lock case, please explain your view more fully.

A. I have not intended to be so understood, nor am I aware that I have made any statement from which such a conclusion can be fairly drawn.

OLIVER DRAKE.

Subscribed and sworn to before me this 19th day of February, 1885.

SAMUEL R. BETTS,
United States Com'r, South. Dist. of N. Y.

The times for the respective parties herein to take testimony is hereby extended by consent one week for each.

Adjourned to Wednesday, February 25th, at 1 p. m.

WEDNESDAY, *Feb.* 25—1 p. m.

Met pursuant to adjournment.

Present: A. v. Briesen, of counsel for compl't.

The examination of WILLIAM ROEMER is continued by complainant's counsel:

Q. 5. Have you manufactured locks in accordance with the patent in suit; if so, about to what extent?

A. I have manufactured them and used them on most all of the bags I have sold, and have sold them on frames and off the frames to the trade. I suppose I have made over ten thousand dozens altogether.

Q. 6. Will you please name some of the more prominent
38 persons and firms in the trade to whom you have sold these patented locks?

A. I have sold them to Richard C. Jenkinson, T. B. Peddie & Co., William O. Headley & Son, Edgar Farmer & Co., D. S. Hammond, William Heller, J. Koch, and others. The locks sold to William O. Headley & Son were by that firm charged to Charles Küpper, who put them onto the frames, and sold the frame and lock again to William O. Headley & Son.

Q. 7. At how early a date did you sell these patented locks to the parties named in the last answer?

A. All in the first part of 1878.

Q. 8. You are the same party who is mentioned as complainant in the records of the suit entitled Roemer *vs.* Simon, which records are here in evidence?

A. I am.

Q. 9. After the said suit had been decided in your favor did you or not notify the defendant in this suit to stop infringing your patent, and advise him of that decision?

A. I did; I sent them all a copy of the opinion, and requested them to cease from all further infringement.

Q. 10. What reply, if any, was made by the defendant?

A. This circular, which I now show, was sent to the trade all over the country by the five parties whose names appear on the bottom.

Said circular is offered in evidence by counsel for complainant and marked "Complainant's Exhibit Defendant's Circular," S. R. B., U. S. com'r, February 25, 1885.

Direct examination closed.

Examination closed.

WILLIAM ROEMER.

Subscribed and sworn to before me this 25th day of February 1885.

SAMUEL R. BETTS,
U. S. Com'r, S. D. of N. Y.

(Complainant rests his case.)

39 United States Circuit Court, District of New Jersey.

WILLIAM ROEMER
vs.
RICHARD C. JENKINSON.

Testimony taken in rebuttal, pursuant to the 67th rule in equity, as amended, before Sam'l R. Betts, United States commissioner, on the part of complainant.

229 BROADWAY, NEW YORK, *Oct.* 29, 1885—11 a. m.

Met pursuant to notice hereto annexed.

Present: A. v. Briesen, Esq., of counsel for complainant, and J. E. Hindon Hyde, Esq., of counsel for defendant.

CHARLES M. THEBERATH, a witness called on behalf of complainant in rebuttal, and having been duly sworn, deposes and says:

Q. 1. What is your name, age, residence, and occupation?

A. My name is Charles M. Theberath; I reside in Newark, New Jersey, corner Clinton and Fifth avenue; my place of business is No. 10 and 12 Ward street; I am 48 years old; I am a manufacturer of saddlery hardware.

Q. 2. For how long a time have you devoted yourself to mechanical pursuits?

A. Since the year 1864; I established my present business then.

40 Q. 3. State whether in your business the goods produced are mostly of metal and leather.

A. About three-fourths contain metal alone; about one-fourth contain metal and leather combined.

Q. 4. Have you any interest, directly or indirectly, in questions touching locks for traveling bags, satchels, and the like?

A. None whatever; it is entirely out of my line of business.

Q. 5. Please look at the lock on "Complainant's Exhibit Peddie Satchel," and state whether the lower part thereof—I mean the long portion which has the notches in the ends—is, in your opinion as a mechanic, part of the lock case or an extended bottom plate.

(Objected to as incompetent on the ground that the witness has declared that locks are entirely out of his line of business.)

A. It is in my opinion part of the lock case.

Q. 6. Please state why it is not, in your opinion, a bottom plate.

A. I would consider a plate a piece of metal with a plane surface top and bottom; this is a piece of metal struck up in a die in such a manner that it forms a box in itself by the four flanges it pro-

duces on each side and each end of that piece of metal, and could, in my opinion, be used as a lock itself if there is room enough to place the movements, which are inside of a lock, between the two flanges, and if there is not room enough the flanges could easily enough be made high enough to admit the introduction of such movements which are necessary in a lock.

Q. 7. State whether, in your opinion, the said lower part of the Jenkinson lock is part of the lock case, although none of the lock mechanism is visible on its under side.

A. It seems to me to be a part of it, as it has to be fastened to it; it has to be fastened to this lower portion.

Q. 8. You mean part of the lock mechanism is fastened to the lower portion of the case—is that it?

(Objected to as leading.)

A. That's it; that's just what I see in this case.

Direct examination closed.

41 Cross-examination:

Cross-Q. 9. Do you consider yourself an expert in locks for traveling bags and satchels?

A. I do not.

Cross-Q. 10. Are you familiar with the different kinds of locks used on bags and satchels?

A. I have often examined locks and saw them on bags. They being made of metal drew my attention to it more or less.

Cross-Q. 11. But would you say that you have a familiarity with the various kinds and styles of locks used on traveling bags and satchels?

(Counsel for complainant asks whether by "various" counsel means all the locks used in this world, and, if not all, how it is supposed to be limited.)

(Counsel for defendant refers counsel for complainant to the dictionary.)

(Question objected to as incompetent.)

A. I would not say that, with all the styles.

Cross-Q. 12. You say that you would consider a "plate" a piece of metal with a plane surface, top and bottom. Do you mean that such piece of metal, in your opinion, must be perfectly flat on both sides to be a "plate?"

A. I mean that it should not have any extended flanges; that's what I mean by a plate.

(Answer objected to as not responsive, and question repeated.)

Cross-Q. 13. Question repeated.

A. A plate may have an ornamentation on its surface; for instance, like the top of a table on which there is a chess-board marked out on the top; that would be called a table plate, I should say, without any flanges projecting over the surface of a plate.

Cross-Q. 14. Do you consider that a tin soup plate has plane surfaces on its top and bottom?

42 A. A soup plate is a different construction altogether from a plate that is in the manufacture of locks; no, I don't say it has.

(The question was re-read to the witness before he said, "No, I don't say it has.")

Cross-Q. 15. And you have seen a soup or dinner plate with a circular flange on its bottom surface to make it stand steady, have you not?

A. I don't know as I ever have; I can't remember.

Cross-Q. 16. If it had such a flange, would it cease, in your opinion, to be a plate?

(Objected to as assuming that a soup plate is a plate.)

A. I think it might be called a bowl rather than a plate.

Cross-Q. 17. Is it the flange on the bottom which would change it into a bowl in that case, in your opinion?

A. I might say yes; bowls are constructed the same way as dinner plates.

Cross-Q. 18. Then, if I understand you, a piece of metal cannot be a plate if it has any projections extending above either of its surfaces; is that so?

A. I would not say that, because a plate is a zinc plate under a stove, for instance, has very often an extension above the plane surface, and still it is nothing more nor less than a plate of metal.

Cross-Q. 19. And have you not seen flanged plates used on the structure of the elevated railroads and in other places?

A. I thought this was a question of satchel locks and not the question of elevated railroads, of which I don't pretend to have any knowledge.

(Objected to as not responsive, and question repeated.)

Cross-Q. 20. Question repeated.

(Objected to as already answered in the last part of the previous answer.)

43 A. There may be such plates in the construction of elevated railroads; I cannot call one to my mind just now.

Cross-Q. 21. What do you consider the function of a lock plate?

A. A lock plate, it seems to me, is a plate without any flanges to cover up a lock.

Cross-Q. 22. And the thing upon which the lock box and lock mechanism are mounted, is it not?

A. Not necessarily, for the reason it can be mounted upon this frame without any plate, according to my opinions, as I show it in this exhibit (Jenkinson Frame and Lock), placing this lock on this frame.

(The witness holds upon the frame of the exhibit the upper part of the Jenkinson lock.)

If there were holes in this frame for the reception of these small metal extensions of the lock that could be fastened to the frame as well as to this piece of metal to which it was formerly attached, and by a little alteration of the front part, which is fastened to the front part of the frame of this exhibit, so as to strike direct into the holes of the lock, it would answer the purpose just as well without the addition of a plate underneath.

Cross-Q. 23. And in the case you have supposed just now the lock box and lock mechanism would be fastened directly to the frame, would it not?

A. Yes, sir.

Cross-Q. 24. And then, when you inserted between the lock box and the frame a lock plate, you would have the Jenkinson lock as originally constructed, would you not?

A. I should not think it was, according to my opinion.

Cross-Q. 25. What functions besides those of a lock plate does the lower extended portion of the Peddie lock perform?

(Objected to as assuming that it performs the function of a plate.)

A. It performs the function of the lock itself. Part of the lock, as part of the movement of the lock, whatever you call it, is fastened to this.

44 Cross-Q. 26. Did you ever see a lock plate with a part of the movement of a lock fastened to it?

A. I could not say whether I have or not.

Cross-Q. 27. Could that be done, in your opinion?

A. Yes; it might be done.

Cross-Q. 28. Then it is not that by itself which makes the lower portion of the Peddie lock something else than a lock plate, is it?

A. I should not consider this merely a plate for the purpose of covering the inside of the lock, for the reason that it has projecting flanges with one notch at each end; the notches are cut, as it appears to me, for the purpose of receiving the handle rings.

Cross-Q. 29. Then, in your opinion, the lower portion of the Peddie lock serves partly as a lock plate and partly as a box, is not that true?

(Objected to as seeking to mislead the witness, in view of his answers 25 to 28, inclusive.)

A. I don't know what the question means by the box. If the counsel will put the question a little plainer.

Cross-Q. 30. The upper surface or the lower half of the Peddie lock serves as a plate and the under or flanged side is what you consider the box portion, is not that so?

A. I have already stated that it not only serves for covering up the bottom of the lock, but also for the reception of the handle rings.

Cross-Q. 31. And a lock plate also covers up the bottom of the lock, does it not, when it is used?

A. Yes, sir.

Cross-Q. 32. Then the upper surface of the lower half of the Peddie lock acts as lock plate, does it not?

(Objected to as incompetent, and counsel for complainant asks whether the question relates to the whole length of said upper surface.)

45 (Counsel for defendant replies that he only means the portion of the upper surface covered by the box containing the mechanism of the lock.)

A. That portion of it does.

Cross-Q. 33. And it is the lower and flanged surface of the lower portion of Peddie lock which you consider the box portion, is it not?

(Objected to as incompetent.)

A. I don't exactly get the spirit of that question.

Cross-Q. 34. Which portion of the lower half of the Jenkinson lock forms a box, its upper side or lower side?

(Objected to as incompetent and as overlooking the distinction between the inside and the outside of the box.)

(Question withdrawn in view of the instruction of the witness.)

Cross-examination closed.

Redirect examination:

Redirect Q. 35. Is not a soup plate as much of a plate as the mould board of a plow is a board, a person called a book-worm a worm, a plant called wall-pie a pie, or a collectorship of this port a ship?

A. Yes, sir.

Redirect examination closed.

Recross-examination:

Recross-Q. 36. Is it not also more a plate, in your opinion, than a book-worm is a worm?

A. No.

Examination closed.

(It is understood that this testimony is given in the four
46 cases in which the witness has been sworn, viz., Roemer *vs.* Jenkinson, Roemer *vs.* Headley, Roemer *vs.* Peddie, Roemer *vs.* Kupper.)

CHAS. M. THEBERATH.

Subscribed and sworn to before me this 29th day of October, 1885.

SAM'L R. BETTS,
United States Com'r, South. Dist. of New York.

Adjourned to Saturday, October 31, 11.30 a. m.

SATURDAY, *Oct.* 31—11.30 a. m.

Met pursuant to adjournment.
Present: Counsel as before.

WILLIAM ROEMER, a witness called on the part of complainant, in rebuttal, and having been first duly sworn, deposes and says:

Q. 1. What is your name, age, residence, and occupation?
A. William Roemer; age, forty-eight years; I reside at Newark, N. J; by occupation I am a manufacturer of traveling bags; I am the complainant in this suit.
Q. 2. Are you the same William Roemer whose testimony is recorded in Exhibit "Complainant's Record Roemer agst. Simon?
A. Yes, sir.
Q. 3. Please look at the two exhibits, each marked "Defendants' Ex. Dog's Head Attachment, S. R. B., U. S. Com'r, April 27, 1885," and measure the same, and state how wide they are.
A. They are $\frac{3}{32}$ of an inch wide.
Q. 4. How long have you been a manufacturer of traveling bags and what knowledge have you respecting the different kinds of bags and frames in market in 1870 and since?
47 A. I am a manufacturer of traveling bags since 1865. I know—I think I can safely say—every kind of bag that has been in the market since 1870.
Q. 5. When first, to your knowledge, were frames for bags made sufficiently wide to receive upon them such things as "Exhibit Dog's Head Attachment?"
A. Since 1880.
Q. 6. What were the widest frames before 1880?

(Objected to as incompetent in view of witness' answer to Q. 4.)

A. Three-fourths of an inch wide.
Q. 7. State whether or not "Defendants' Exhibit Dog's Head Attachment" could be put on a three-fourths-inch frame.
A. It could not, for it would be wider than the frame, which would not make a salable job.
Q. 8. You say that in 1880 and since 1880 wider frames were introduced. On what kind of bags were they used—I mean large or small bags?
A. They were used on large bags, and as we call large gentlemen's traveling bags.

(Counsel for complainant calls for the production of "Complainant's Ex. Peddie Dog's Head," touching which he desires to examine this witness, and which exhibit was left in charge of defendants' counsel.)
(Counsel for defendant replies that none of the exhibits were left in his charge, but that he believes that this exhibit, together with certain other exhibits, was attached to defendants' record in this case by the examiner when the same was certified to the court on a motion to strike out certain portions of the evidence, and that he

has not, to his knowledge, seen any of such exhibits since said motion until he saw them in the office of complainant's solicitor, October 29, 1885, when he was informed that this particular exhibit was not among the number. He further says that he has looked for said exhibit at his office without success, but has offered to try and will try to produce a duplicate of said exhibit.)

48 (Counsel for complainant asks the officer for the said exhibit, and also to state if he has the defendants' record; and, if so, from whom he received said record back, after having certified it May 7, 1885, to the court.)

(The examiner states that he has not said exhibit in his possession and has not seen it since he attached it to defendants' testimony referred to and certified the whole to the court to be used on the motion. He also states that he now has defendants' record in his possession, but none of defendants' exhibits, and that he received defendants' record from Messrs. Betts, Atterbury & Betts, defendants' solicitors, and that no exhibits were attached thereto at the time.)

(Defendants' counsel states that he did not detach said exhibits from the record, and does not know who did it.)

Q. 9. State whether or not the "Defendants' Exhibits Dog's Head Attachments" are adapted to serve as handle supports for traveling bags having frames of the size necessary for the purpose of receiving such dog's head attachments.

A. No; they are not. They are entirely too light, and, where the opening for the rings are, too narrow for the rings.

Q. 10. If they were strong enough and wide enough for the purpose how would they compare with your patented lock in suit?

A. They would not compare with my patented lock, as they are not a case with notched sides for the reception of the handle ring, and they would therefore not make a lock and handle combined, as specified in my patent.

Q. 11. How many rivets would it take to fasten these dog-head attachments and the lock between them to a frame?

A. It would take six rivets.

Q. 12. How many rivets are required to secure your patented lock with its handle attachments to a frame?

A. Only two.

Q. 13. How many rivets do the defendants use for securing their locks and handle attachments to their frames? I refer to the defendants' locks complained of herein.

49 A. They only use two, the same as I do in my patent.

Q. 14. What effect has it upon the frame of a bag to put a great many rivets through it?

A. It weakens the frame.

Q. 15. The defendants' witnesses, some of them, seek to persuade the court that the two exhibits marked "Defendants' Exhibit Dog's Head Attachment, S. R. B., U. S. Commis'r, April 27, 1885," were made in a die. Were they made in a die?

(Objected to, as the witness has not shown any knowledge on the subject; question withdrawn.)

Q. 16. Look at the two exhibits mentioned in the last question and state whether the notches in them are alike or different as to position, size, or shape.

A. They are not alike.

(Defendants' counsel requests the examiner to note that the witness used a magnifying glass in looking at the exhibit referred to.)

(The examiner states that prior to giving the answer the witness had a magnifying glass in one hand and the exhibits in another.)

Q. 17. From the position, size, and form of the notches in said two exhibits, do you, as a mechanic, find that they were made in dies in the regular process of manufacturing these exhibits or were they recently cut by hand?

A. They were not made in a die and must have been recently made, for if they were not recently made and had been made in a die they would be even on both sides.

Q. 18. How about the edges of the notches, are they as old as the other edges of the said exhibits? Take the magnifying glass and go to the light before you answer the question.

(Objected to as leading.)

A. They seem to be of later date, for they are sharper than the other edges.

Q. 19. Did you ever see any traveling bags which had
50 fastened upon their frames for handle supports things like "Defendants' Exhibit Dog's Head Attachment?"

A. I never did.

Q. 20. If such things had been so used would you or not have knowledge thereof?

A. I would.

Q. 21. The defendants' witness, Chapman, who testifies about these dog's head attachments, is in the employ of T. B. Reddie & Co. State what attitude that firm assumed towards you in the suit of Roemer *vs.* Simon, involving the same patent which is here in suit.

(Objected to as incompetent and immaterial.)

A. They were there opposed to me and assisted the defendant, and even, I think, used wrong means to defeat my patents.

Q. 22. What witnesses did they furnish the defense in that suit?

(Objected to, as it has not appeared that any witnesses were furnished to the defendant in that suit.)

A. They furnished George B. Jenkinson and Robert Cohn.

Q. 23. If such dog's head attachments with notched sides had been used by that firm, as stated by Chapman, before November, 1882, would or not Mr. Jenkinson have testified in respect to them?

(Objected to as incompetent.)

A. He would.

Q. 24. Why?

(Same objection.)

A. Because he was trying every means to break my patent.

Q. 25. Did Jenkinson sue you for handing or showing your counsel's brief in that Simon suit to another person?

(Same objection, and as immaterial.)

A. He did, for showing that brief to his partner, T. B. Peddie.

51 Q. 26. What became of that suit?

(Same objection.)

A. The suit was dismissed; no cause of action forced.

Q. 27. The other witness of the defendants in this suit who testified respecting the use of dog-head attachments on the frames of traveling bags is Bernard Conlan; did he or not testify against you in the Simon suit?

A. He did.

Q. 28. In the Simon suit George B. Jenkinson testified (Q. 74) that you warned him not to use a certain lock, which you claimed was an infringement of your patent, and that (Q. 116) he thereupn quit using that lock; can you tell us when it was that you so induced him to respect your patent?

(Objected to as incompetent and immaterial.)

A. I think it was in the fall of 1880; it may have been in the spring of 1881; it was a lock like that on "Complainant's Exhibit Jenkinson Frame and Lock."

Q. 29. You are now testifying in the four suits you brought, respectively, against Jenkinson, Kupper, Headley, and Peddie; is there another suit pending against infringers of the same patent?

(Same objection.)

A. There is; against R. Neumann & Co.

Q. 30. Who are the members of that firm?

(Same objection.)

A. David Neumann, Carl Neumann, and Gustav Bernheim.

Q. 31. I find in the record of the suit entitled Wm. Simon against said firm of R. Neumann & Co., which case was decided by Judge Wheeler for the defendants (see Off. Gazette of Pat. Office, May 27, 1884, p. 918), the following testimony of the said Gustav Bernheim:

"Q. 16 (p. 13, Compl't's Record). Have you or your firm

52 ever sold or made a lock with an extended lock plate, which has a fastening and a lock and ring loops made on the same plate, as seen in the Bernheim lock?

A. We never sold a lock with an extended lock plate, nor has the Bernheim lock shown here an extended lock plate.

Q. 17. What do you call it?

A. The extended part is a lock box and not a plate.

Q. 66 (p. 22, Compl't's Record). What are the elevations at the ends of the lower lock box used for?

A. To put handle rings in.

Also Q. 13 (p. 7, Def't's Record). Please look at Cross-Q. and Ans. 35, in the testimony of said Macauley, where he states that in the construction shown in the reissue the rings of the carrying strap are attached to the extended part of the lock plate, and please state whether that is true of the Bernheim locks.

A. The Bernheim locks, having no lock-plates, cannot have any extended lock plates and nothing attached to those extended parts.

Also answer to Q. 8 (p. 4, Def 't's Record). In Compl't's Exhibit Bernheim Lock no lock plate is used at all; the lock consists of an upper box and a lower box, and when fastened to the frame the top of the frame serves as a lock plate."

Do you know to what lock Bernheim's said testimony refers and how it compares with the Jenkinson lock here in suit?

(Objected to as not rebuttal and as the evidence referred to purports to be quoted in part only, and therefore incompetent and not in any way made competent, and notice is given that a motion will be made to strike out any evidence which may be taken in regard to said suit of Simon ag'st. Newmann or the subject-matter thereof as incompetent, immaterial, and not rebuttal, and the same objection and notice are continued without repetition to all further questions on the same subject.)

A. It was a lock similar to the "Complainant's Exhibit Jenkinson's Frame and Lock."

Q. 32. And do you now sue them for making that lock?

53 A. Yes, sir.

(Counsel for complainant offers in evidence the record in Simon *vs.* Neuman, on file in the clerk's office of the U. S. circuit court for the southern district of New York, together with all the exhibits attached thereto on the part of the complainant and of the defendant.)

(Objected to as incompetent and not in rebuttal; same notice of motion as to Q. 31.)

Q. 33. Is that firm of R. Neumann & Co. the same R. Neumann & Co. who publish the printed circular heretofore offered in evidence in this suit, wherein they say: "Our locks have the handle rings not attached to the lock case, but to extended bottom plates?"

(Same objections and notice.)

A. It is.

Q. 34. Does that circular refer to the same lock to which Bernheim's testimony in the suit of Simon *vs.* Neumann refers, or to a different one, if you know?

(Same objections and notice.)

A. It refers to the same lock.

Adjourned to Thursday, November 5th, 11 a. m.

THURSDAY, *Nov.* 5—11 a. m.

Met pursuant to adjournment.
Present: Counsel as before.

(Defendants' counsel states that he has made an effort to obtain a duplicate of the exhibit which seems to have been lost by writing to Mr. Chapman, who produced the former exhibit, and that he received from him the letter dated November 2, 1885, which he now produces and offers in evidence, together with the sample dog's head therein inclosed, and asks the examiner to certify that
53½ the only difference between the lost exhibit and the one now produced by defendants' counsel consisted in the fact that the lost exhibit did not have the two pierced lugs upon the sample now produced, but had two pointed prongs in their stead, which projected downwards and were intended to be passed through the article to which such dog head was to be attached and clinched on the under side.)

(Counsel for complainant objects to the offer of Chapman's letter and the exhibit thereto annexed on the ground that by the same the record is made to appear different from what it was, and he calls the attention of the court particularly to that part of Chapman's testimony which seeks to show that T. B. Peddie & Co. have kept, as a matter of routine business, Defendants' Exhibits Dog's-Head Attachments for the last fifteen years; that the Complainant's Exhibit Peddie's Dog's Head was bought by T. B. Peddie & Co. in 1885, and that, nevertheless, as a matter of routine business, that kind of a structure can no longer be furnished by T. B. Peddie & Co.

(Counsel for complainant objects to the examiner testifying respecting the exhibit which appears to have been lost, unless the examiner is willing to be cross-examined and regarded as the defendants' witness in the matter.)

(Defendants' counsel states that he has no objection to the examiner testifying on the subject, but that he will not be defendants' witness, and asks that the letter and enclosure be marked, respectively, Defendants' Exhibit Chapman Letter and Defendants' Exhibit Substitute for Complainant's Exhibit.)

(Counsel for complainant objects to the exhibit being marked "Substitute for Complainant's Exhibit" because it is not a substitute nor like nor similar to the complainant's exhibit, and requests the officer to not so mark it; and he objects to the offer as incompetent, the alleged exhibit not having been proven by any one to be other than specially prepared for this suit by Mr. Chapman.)

54 (The examiner suggests that it be called "Defendants' Exhibit Dog's Head Accompanying Chapman Letter of Nov. 2, 1885," and it is accordingly so marked.)

(The examiner states that he considers that the evidence as to

difference between the two dogs' heads should be brought out by examination of witnesses and not by an examiner's certificate.)

Direct examination closed.

Cross-examination of Mr. ROEMER by Mr. HYDE:

Cross-Q. 35. I suppose that prior to 1880 bag frames were made of different widths, were they not?

A. No, sir; they were only made $\frac{3}{4}$ and less than $\frac{3}{4}$ inches wide.

(Answer objected to as not responsive and question repeated.)

Cross-Q. 36. Question repeated.

A. Same answer.

Cross-Q. 37. Then they were made of different widths prior to 1880, were they not?

A. They were made of different widths, but no wider than $\frac{3}{4}$ of an inch wide; the different widths were below $\frac{3}{4}$ of an inch wide.

Cross-Q. 38. Do you wish to be understood as saying that prior to 1880 there was no bag frame made in this country wider than $\frac{3}{4}$ of an inch?

A. I do want to be so understood.

Cross-Q. 39. What is the widest frame for a traveling bag made since 1880?

A. $\frac{7}{8}$ of an inch wide.

Cross-Q. 40. Then it is your opinion, is it, that there is no bag frame made now on the top of which Defendants' Exhibit Dog's Head Attachment can be placed without projecting over the edges of such frame; is that the fact?

A. Yes, sir.

Cross-Q. 41. And that is your knowledge, also, is it?

A. Yes, sir; my knowledge is that there are no such plates made as wide as the dog's head measures.

55 Cross-Q. 42. In the answers which you have given, the greatest width of bag frames prior to or since 1880, did your answers refer to covered frames or uncovered frames?

A. Both.

Cross-Q. 43. Then do you mean that the widest covered frame made since 1880 is $\frac{7}{8}$ of an inch wide?

A. I do.

Cross-Q. 44. Why were they made wider in 1880 and prior to that year?

A. To give the frame a heavier appearance.

Cross-Q. 45. Why was that any more necessary in 1880 than in 1879?

A. I don't know.

Cross-Q. 46. Do you know who first made such wider frames?

A. I don't know.

Cross-Q. 47. Do you know when they first began to be made wider than $\frac{3}{4}$ of an inch?

A. In 1880 or 1881.

Cross-Q. 48. How do you know that?

A. I know, because I started making frames in 1880 $\frac{3}{4}$ of an inch wide, and was obliged to make them $\frac{7}{8}$ of an inch wide because $\frac{7}{8}$ frames were in the market and gave a heavier appearance.

Cross-Q. 49. How long had those wider frames been in the market in 1880?

A. They had not been in the market before 1880, but they were introduced about 1880 or 1881.

Cross-Q. 50. You say you started to make frames $\frac{3}{4}$ of an inch wide in 1880; had you made bag frames prior to that time?

A. No, sir.

Cross-Q. 51. Then you learned what was in the market when you began to make bag frames; is that it?

A. No, sir; I learned what was in the market by being employed as a bag-maker since 1852 and by going around soliciting orders, and at the same time inspecting goods on exhibition for sale in the various stores in the country.

Cross-Q. 52. The Defendants' Exhibits Dog's-Head Attachment have notches in the sides like the notches in your patented lock in suit, have they not?

56

A. They have not, like they are in my patented lock. In my patented lock the case is open, there where the rivet passes through. Thus the strain of the ring works against the rivet and the edge of the case, and two rivets will secure the case to the frame, while if an underlay plate, if a lock plate was made, it having dogs' heads like this stamped upon each end of the plate, it would require four rivets to hold the plate and handle to the frame; you could never fasten a plate with two rivets only, for it would break off right on the band where the mouth of the dog's head is bent up.

(Answer objected to as not responsive to the question.)

Cross-Q. 53. Will you please confine yourself to my question? And again I ask you if the notches in the sides of the Defendants' Exhibits Dog's-Head Attachment are not in shape like the notches in the sides of your patented lock in suit?

A. They are not.

Cross-Q. 54. What is the difference in shape?

A. The difference is that my notches have vertical walls and the hollow part extends under the rivet hole.

Cross-Q. 5. Again I ask you to confine yourself to the notches solely; and with that understanding will you please state if there is any other difference in shape between the notches of your patented lock and the notches in the Defendant's Exhibits Dog's-Head Attachment than that yours have vertical sides, while the exhibits, as you say, have not?

A. I don't think there is.

Cross-Q. 56. In the defendants' lock in suit clinches are used to fasten down the portion of lock containing the lock mechanism, down upon the lower portion of the lock, are they not?

A. Yes, sir.

Cross-Q. 57. And those clinches serve the same purpose as rivets, do they not?

57 A. They do.

Cross-Q. 58. Then, in the defendants' lock there are two rivets and two clinches used to fasten the entire lock upon the bag frame, are there not?

A. There is only two rivets used to fasten the entire lock to the bag frame.

(Answer objected to as not responsive, and question repeated.)

Cross-Q. 59. Question repeated.

A. There are only two rivets used to fasten the entire lock to the bag frame.

Cross-Q. 60. Would the entire lock, in the defendants' lock, in your opinion, be fastened to the bag frame without the use of the clinches referred to?

A. It could be done, and very easily.

Cross-Q. 61. My question was, Would it be done as the lock is made?

A. Certainly it would.

Cross-Q. 62. In that case what would hold the upper portion of the lock attached to the bag frame?

A. In such a case the lower box would be raised up a little higher, and might be in the same shape as the Jenkinson lock, and a lock plate like there is in Complainant's Exhibit Model No. 2, February 12, 1885, might be put in to keep the lock mechanism from falling out.

(Answer objected to as not responsive to the question.)

Cross-Q. 63. My question, as I explain, referred to the defendants' lock, as they make it, and not to modifications of that lock; remembering that fact, will you please state, if you can, what would fasten the upper portion of the lock to the bag frame if the clinches were not used in that way?

(Objected to, as the question contradicts itself and cannot be answered, the witness being told by the question to confine his answer to the lock as defendants make it, and not to a modification, and then asked to say what would happen if there were a modification, to wit, if the clinches were not there.)

58 A. I don't know.

Cross-Q. 64. There would be nothing to fasten it, would there, in that case?

A. You say so in your question. I don't think there would be any clinches.

Cross-Q. 65. Then, as defendants make their lock there are the clinches and two rivets required to fasten the entire structure upon the bag frame, are there not?

A. There are clinches required to fasten the upper case to the lower one and two rivets required to fasten the whole structure to the bag frame.

Cross-Q. 66. There are four clinches used in the defendants' lock to fasten the upper portion upon the lower portion, are there not?

A. Yes, sir.

Cross-Q. 67. In your patented lock in suit there are no such clinches or any substitute for them, are there?

A. No, sir.

Cross-Q. 68. Then the defendants' lock uses six fastenings to secure the entire structure to the bag, while yours only requires two; is not that the fact?

A. No, sir; it is not. The defendants' structure, as far as the patented feature is concerned, is an exact copy of my patent. It has only two rivets to fasten the lock and handle to the frame, and they have left the patent feature, what I claim, exactly as described, and merely took the lock mechanism out of the case and put it in a separate box, while I do not claim putting the lock mechanism into a case, but claim notching the sides of a case. Had a case with notched sides existed before I made my invention I could never have obtained a patent for putting the lock mechanism into such a case.

(Answer objected to as not responsive, and question repeated.)

Cross-Q. 69. Question repeated.

(Objected to as fully answered, especially by the words, No, sir, with which the answer begun.)

A. No, sir; the defendants' structure also only requires two rivets to fasten the lock and handle to the frame.

59 Cross-Q. 70. Do you mean to testify that there are not six fastenings used in defendants' lock to secure the entire structure to the bag?

A. I swear so that there are only two rivets to fasten the entire structure to the bag frame.

Cross-Q. 71. I call your attention to the fact that my question did not speak of "rivets" at all, and once more I ask you if you mean to testify that in the defendants' lock there are not six fastenings, namely, four clinches and two rivets, used to fasten the entire structure to the bag?

A. There are only two fastenings, namely, two rivets, used to fasten the entire structure to the bag frame.

(Defendants' counsel gives notice that on the 13th day of November, at the opening of court on that day, or as soon thereafter as counsel can be heard, he will make a motion in the United States circuit court for the southern district of New York, in the two cases of Roemer *vs.* Peddie and Roemer *vs.* Headley, in which cases this record is taken, to strike from the record in such suits the 21st, 22d, 23d, 24th, 25th, 26th, 27th, 28th, 29th, 30th, 31st, 32d, 33d, and 34th questions and answers thereto of the deposition of Wm. Roemer, taken on the 31st day of October, 1885, on the ground that they are incompetent, immaterial, and irrelevant to any of the issues in said

two cases, and requests the examiner to certify the record to the court on that day for the purposes of such motion.)

(Counsel for complainant submits that the examiner has no right to part with the testimony, and desires to know whether, if, in parting with it, it should be lost, as one of the exhibits was lost, he will be responsible for the injury done the complainant.)

Examination closed.

WILLIAM ROEMER.

Subscribed and sworn to before me this 5th day of November, 1885.

SAMUEL R. BETTS,
United States Com'r, Southern District of New York.

Adjourned to Thursday, Nov. 12, 1885.

60 NEW YORK, *Thursday, Nov.* 12, 1885—11 a. m.

Met pursuant to adjournment.

Present: Counsel as before.

(Defendants' counsel states that since the last session his office boy has found the missing complainant's exhibit, which he produces and places in the custody of the examiner.)

(Counsel for complainant is satisfied that the dog's head now produced is not his exhibit, although the exhibit tag it carries is the original one, and that he refers to the statement of Mr. Hyde, made on Nov. 5, 1885, and to the cross and redirect questions propounded to the witness Chapman in support of his belief that the exhibit is not produced, and therefore refuses to recognize the same as an exhibit of complainant.)

(Defendants' counsel asks complainant's counsel if, while recognizing the tag as genuine, he means to insinuate that defendants' counsel or any one in his office has falsified his exhibit, and says that his statement above referred to only shows how easy it is to be mistaken in a matter of memory where a witness describes three articles, two of which only are produced.)

(Counsel for complainant replies that, to the best of his recollection, this is not the exhibit introduced in May, 1885. How the wrong instrument came to be put on the right tag he is unable to say, as this was not done in his office, and it is possible that some office boy in the employ of defendants' counsel may have put the card on the wrong exhibit. It seems surprising that the said exhibit should now have been found lying on a table in defendants' counsel's office, although it could not be found on that table or anywhere else in defendants' counsel's office when asked for by counsel for complainant, who made many efforts to have said exhibit found.)

61 (Defendants' counsel replies that however extraordinary such may appear to be to complainant's counsel, nevertheless such is the fact, and asks complainant's counsel to again answer the

question whether he means to insinuate that the exhibit has been changed while in the office of defendants' counsel.)

(Defendants' counsel adds that as complainant's counsel makes no answer to the question, he indignantly repels the insinuation, and states that the only reason why he can imagine that he is not treated with the courtesy customary between gentlemen is that complainant's counsel does not know what such courtesy is.)

(Counsel for complainant asks the officer to certify—

(1.) Whether any such insinuation as is contained in the requests of defendants' counsel was contained in any remarks made by counsel for complainant off the record. They certainly are not to be found on the record.

(2.) Whether he treated defendants' counsel otherwise than with courtesy.

(3.) Why, if he knows, the tags on Defendants' Exhibit Dog's Head Attachments are tied to the exhibits in such a manner that they cannot be detached, while that on the exhibit produced this morning is looped on to enable the detachment.)

(The examiner certified that he has heard no insinuations made off the record and seen no discourteous treatment by counsel, and that he has no knowledge as to why the exhibits referred to are tied, as stated.)

(Defendants' counsel now, in view of the unfortunate occurrence which has taken place, requests that all the exhibits in this case on both sides may from henceforth be retained in the custody of the examiner.)

(At the request of defendants' counsel the examiner states that he is willing to keep them if put in his custody.)

62 GUSTAV BERNHEIM, a witness called in rebuttal by complainant, and, having been first duly sworn, deposes and says:

Q. 1. What is your name, age, residence, and occupation?

A. Gustav Bernheim; 40 years old; reside in New York city, and am a manufacturer of and dealer in all kinds of materials for traveling bags and fancy leather work; I am connected with the firm of R. Neumann & Co.

Q. 2. Is that the same firm against which suit was brought recently by William Simon for infringement of Simon's reissued patent No. 9772, of which I now show you a copy?

A. If you call a couple of years ago recently, it is.

Q. 3. Who are the members of the firm of R. Neumann & Co.?

A. I am one of the members, but unless I must I will not say anything further in answer to this question.

Q. 4. The suit of Simon against your firm was decided in your favor, was it not?

A. It was.

Q. 5. Were you present at the hearing or argument of that suit?

A. I was present part of the time.

Q. 6. Did you testify as a witness in that cause?

A. I testified as a witness and as an expert.

Q. 7. Will you please look at the testimony of Gustav Bernheim, which is contained on pages 9–22 of the complainant's printed record in that cause, and state whether it is your testimony?

(Objected to as irrelevant.)

A. If this record is correct it is my testimony.

Q. 8. I now show you the original record in writing from the files of the clerk's office of the circuit court in New York city, and ask you whether you recognize the signature to the deposition immediately following answer to question 66 as your signature?

(Same objection.)

A. I do.

63 Q. 9. Will you also kindly tell us whether or not the testimony on pages 1–20, inclusive, and pages 52–62, inclusive, of the defendant's printed record in that case is recognized by you as your testimony?

A. If the record is correctly printed it is.

(Counsel for complainant again offers in evidence the testimony of this witness given in the suit entitled "William Simon against Carl Neumann and G. Bernheim, defendants, impleaded with David Neumann and Raphael Neumann," which suit was pending in the circuit court of the United States for the southern district of New York, and which testimony was so delivered by this witness on March 20, 1882; April 4, 1882; April 5, 1882; April 19, 1882; April 24, 1882; October 20, 1882, and October 21, 1882, and gives notice that on final hearing he will read the same and that he will print a copy thereof into his record for final hearing.)

(Objected to as not rebuttal and as incompetent and irrelevant, and notice is given that a motion will be made to strike from this record all evidence which may be given by this witness in regard to said suit of Simon *vs.* Neumann on such grounds of objection.)

Direct examination closed.

Cross-examination by Mr. HYDE without waiving the objections before taken:

(Cross-examination waived until such motion is heard and decided.)

(Counsel for complainant produces the witness for cross-examination now and gives notice that he will not again produce him for that purpose. He also informs the defendants' counsel that the witness attends in obedience to a subpœna and not voluntarily.)

64 (Defendants' counsel will wait until such order of the court as may be made on the motion noticed.)

GUSTAV BERNHEIM.

Subscribed and sworn to before me this 12th day of November, 1885.

SAM'L R. BETTS,
United States Comm'r, S. D. of N. Y.

(Defendants' counsel on reconsideration will ask the witness a few questions on cross-examination without waiving the objections heretofore taken.)

Cross-Q. 10. Please look at the lock on "Complainant's Exhibit Peddie Satchel," also at the lock on "Complainant's Exhibit Kupper Frame and Lock," also at the lock on "Complainant's Exhibit Jenkinson Frame and Lock," also at the lock on "Complainant's Exhibit Headley Satchel," and state whether or not any of such locks, being the alleged infringing locks on which these four suits are brought, are like the lock on which you were sued in said suit of Simon *v.* Neumann.

(Objected to as not cross-examination, and counsel for complainant gives notice that he will not print said question and the answer thereto in his records, as he regards the witness to be defendants' witness so far as his testimony is elicited on matter not brought out by the direct.)

A. None of them are like it.

(Counsel for defendants say that he here suspends the cross-examination until the decision of the court on the motion of which notice was given after the answer of this witness to question 9, and gives notice that he withdraws for the present the motion noticed for to-morrow on the record in this case on the 5th of November, 1885, and will give notice when such motion shall be made.)

(Cross-examination suspended.)

GUSTAV BERNHEIM.

Subscribed and sworn to before me this — ——.

—— ——.

65 (Counsel for complainant here notices that he rests his rebuttal.)

(Counsel for defendants, in view of the last statement of complainant's counsel, says that he will make both motions to-morrow, as originally noticed, namely, the motions noticed on the 5th day of November, 1885, and also the motion to strike out the testimony of the witness, Gustav Bernheim, and repeats his request to the examiner to certifiy the record to the court for to-morrow for the purposes of such motions, both of said motions being in the two cases for the southern District of New York.)

(In view of the objection of complainant's counsel heretofore made to leaving the original record go out of possession of the examiner, the examiner states that in his opinion the correct practice is for defendants' counsel to take a certified copy of so much of the record as he needs for the purpose of his motion, which copy the examiner will furnish if requested.)

(Defendants' counsel requests the examiner to have a certified copy of said record of the depositions of William Roemer and Gustav Bernheim made and handed to the court clerk for the purposes of such motion to-morrow.)

(Defendants' counsel gives notice that upon the hearing of said motions he will also make a motion for time to take testimony in surrebuttal.)

(Defendants' counsel requests complainant's to have all the exhibits in this case present in court at the time said motions are heard.)

(Complainant's counsel states that he does not accept above notice as notice of motion in surrebuttal.

1st. As being too short.

2d. As the grounds of the motion are not stated.)

66 229 BROADWAY, NEW YORK, *December 3d*, 1885—2 p. m.

The complainant's proofs in rebuttal having been reopened by consent, the taking of the same is now proceeded with, pursuant to notice hereto annexed.

Present: A. v. Briesen, Esq., counsel for complainant; Thomas Hunt, counsel for defendants.

Counsel for complainant offers in evidence letters patent No. 163,629, granted G. Bernheim, May 25, 1875, for "lock for bags," &c., and the same is marked "Complainant's Exhibit Bernheim 1875 Patent," S. R. B., special examiner, December 3, 1885.

Also letters patent No. 279,733, granted R. Flocke, June 19, 1883, for a "satchel lock," marked "Complainant's Exhibit Flocke 1883 Patent," S. R. B., special examiner, December 3, 1885.

There is reserved to defendants' counsel all right of objection to the offer in evidence of the foregoing exhibits for one week from this date.

Complainant's proofs in rebuttal closed.

DEC. 9, 1885.

(Counsel for defendants objects to the two patents offered in evidence on the 3d day of December, 1885, as not being evidence in rebuttal and as incompetent for any purpose.)

67 COMPLAINANT'S EXHIBIT DEFENDANTS' CIRCULAR. S. R. B., U. S. Com'r. February 25, 1885.

Important Notice to the Trunk and Bag Trade.

The undersigned manufacturers of bags, frames, and locks for satchels and traveling bags wish to inform their friends and the trade generally that none of the locks they are manufacturing or using infringe on a patent granted to one Wm. Roemer under date of September 18, 1877, No. 195,233, the claim of said "patent being for" a lock case, made with notched sides near its ends, to receive and hold the handle rings, thus dispensing with an extended bottom plate.

Our locks have the handle rings not attached to the lock case, but to extended bottom plates.

The records of the Patent Office show that said Roemer, before

obtaining his patent, stated that a feature of his invention was "to do away with the extended bottom plates," and only after this statement was made and recorded the patent was granted to him.

The decree said Roemer obtained against R. Neumann & Co. in 1880 was given by consent and not after trial, the parties having come to a friendly agreement about a certain lock R. Neumann & Co. made at that time and never since.

An attempt, however, made by said Roemer to punish the defendants for alleged contempt, on the strength of said decree, for making locks with extended bottom plates has failed, his honor Judge Nixon, of the United States circuit court for the district of New Jersey, denying the motion. (Opinion filed December 22, 1883.) As has also failed the attempt made by another party to get an injunction against the same defendants, R. Neumann & Co., for using extended bottom plates.

(Opinion given by his honor Judge Wheeler, of the United States district court for the southern district of New York, under date May 10, 1884.)

Our friends are therefore perfectly safe in using locks with extended bottom plates manufactured or sold by the under-
68 signed, and we would request them to notify us immediately of any attempt to interfere with the use or sale of any of our locks or bags with such locks as described above, as we shall defend them in case any suit is brought against them on account of the use and sale of said locks.

June, 1884.

Respectfully,

R. NEUMANN & CO.
R. C. JENKINSON.
CHAS. KUPPER.
T. B. PEDDIE & CO.
WM. O. HEADLY & SON.

(Here follows diagram marked page 69.)

70 UNITED STATES PATENT OFFICE.

WILLIAM ROEMER, of Newark, New Jersey.

Improvement in Combined Lock and Handle for Traveling-Bags.

Specification forming part of Letters Patent No. 195,233, dated September 18, 1877; application filed August 10, 1877.

To all whom it may concern:

Be it known that I, William Roemer, of Newark, in the county of Essex and State of New Jersey, have invented a combined lock and handle holder for traveling-bags, &c., of which the following is a specification:

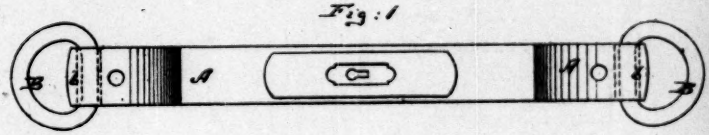
Figure 1 is a top view of my improved combined lock and handle holder. Fig. 2 is a vertical longitudinal section of the same; Fig. 3, a cross-section on the line *c c*, Fig. 2.

W. ROEMER. 69

COMBINED LOCK AND HANDLE FOR TRAVELING-BAGS

No. 195,233. Patented Sept. 18, 1877.

Fig: 1



No. 120.
Roemer
Pl. 69
Pl. 1 sheet

Fig: 2

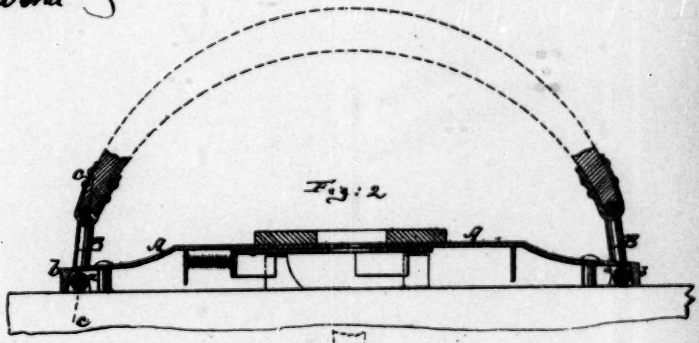


Fig: 3.

Witnesses:
Jas. Shields
James Pratt

Inventor:
William Roemer
by his attorney
A. v. Briesen

71

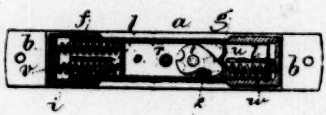
G. BERNHEIM.

Locks for Bags, &c.

No. 163,629. Patented May 25, 1875.

Fig. 1

Fig. 2.



No 120.
Roemer
v.
Peddle et al
} p. 71

Fig. 3.

Witnesses
Chas. H. Smith
Harold Sewell

Inventor
Gustave Bernheim
per Lemuel W. Serrell
atty

Similar letters of reference indicate corresponding parts in all the figures.

This invention relates to a new construction of lock-case for traveling-bags, satchels, and the like, whereby the same is made to retain the rings which connect with the handle, to dispense with an extended bottom plate, and yet to leave said rings movable in their bearings.

The invention consists in forming notches in the sides, near the ends of the lock-case, which notches engage over the lower parts of the handle-rings, all as hereinafter more fully described.

In the accompanying drawing, the letter A represents the lock-case, the same being of suitable construction, shape, and size, and adapted to be fastened to the frame of the satchel or bag by rivets or other suitable means. The ends of the lock-case are, by notches *a*, which are cut into or formed in its sides, made hook-shaped, as clearly shown in Fig. 2, and these hooks *b*, thus produced, serve to retain the handle-rings B B in place. These handle-rings are, as indicated in Fig. 3, preferably flattened at their lower parts, and are, with these flattened portions, placed under the hooks *b* of the lock-case, and thereby secured to the satchel-frame, to which the lock-case is riveted, as already described. In these hooks, however, the rings are free to vibrate, and free, therefore, to move with the handles, and the rings constitute, in consequence, a flexible connection between the handle and the bag or satchel.

By making the notches in the sides, the top of the lock-case remains smooth and offers no obstruction to the free movement of handle and rings.

I claim—

The lock-case made with the notched sides *a a* near its ends to receive and hold the handle-rings B, substantially as herein shown and described.

WILLIAM ROEMER.

Witnesses:
ERNEST C. WEBB.
F. v. BRIESEN.

(Here follows diagram marked page 71.)

72

UNITED STATES PATENT OFFICE.

GUSTAVE BERNHEIM, of New York, N. Y.

Improvement in Locks for Bags, &c.

Specification forming part of Letters Patent No. 163,629, dated May 25, 1875; application filed April 19, 1875.

Case A.

To all whom it may concern:

Be it known that I, Gustave Bernheim, of the city and State of New York, have invented an improvement in valise-locks, of which the following is a specification:

Valise-locks have been made with a two-part case having end pieces, one of which is movable, and connected to the catch, so that by pressing the case endwise the lock is opened, and in valise-locks of this character a bolt has been used that is operated by a key. I make the lock-case with a hollow box-shaped base, that raises the lock and allows the catch to pass in below the works of the lock, and I connect the latch with the moving end of the case by a plate that is above the base, and I employ a tumbler, hook, and yielding end to prevent the latch being moved when the lock is locked.

In the drawing, Figure 1 is a vertical longitudinal section. Fig. 2 is a sectional plan at the line *x x*, and Fig. 3 is a cross-section at the latch.

The base *a* is box-shaped, and attached by the end flanges *b* to the valise-frame, and at one side of the box there is an opening at *c*, for allowing the inclined catch upon the other part of the bag-frame to pass in and be latched. The bolt or latch *e* is upon the under side of the plate *i*, and passes down through a mortise in the box *a*, and this plate *i* extends to and is connected with the movable end *f* of the lock-case. The stationary portion *g* of the lock-case is connected to the base *a* by the plates *l l*, that are fastened at their upper ends to said case, and their lower ends pass through slots in the base *a*, and they are bent or riveted, so as to hold the case *g* and base *a* firmly together. The latch-plate *i* is slotted where it passes the plate *l*, and the stud-plate *o* is also slotted to pass these plates *l*. Near one end of this stud-plate *o* is an abutment, against which the helical spring or springs *v* act to press the moving end *f* of the case from the stationary portion *g*, and in so doing move the latch *e*. The reverse movement by the pressure upon the end *f* unlatches the catch, and allows the bag to be opened. The catch is shown by dotted lines in Fig. 1. The stud-plate *o* carries the stud *r* for the key, there being a key-hole in line therewith in the case *g*, and upon this plate *o* the tumbler *t* is pivoted. Said tumbler has a hooked end that catches the stud 2, that projects up from the latch-plate *i*, when said tumbler is turned in one direction, to prevent the latch being disconnected from the catch, and thereby lock the valise. When the tumbler *t* is turned the other way by the key the latch is liberated. To prevent the tumbler moving accidentally, and to hold it in position, I employ the corrugated presser *u*, that is at the moving end of the tumbler, and is acted upon by the spring *w*. This presser is moved back by the swinging end of the tumbler as it passes from one corrugation to the next.

I claim as my invention—

1. The latch *e* upon the sliding plate *i*, that is connected to the moving end *f* of the bolt-case, in combination with the stationary portion *g* of said case, and the box-shaped base *a*, into which the latch projects, substantially as set forth.

2. The latch-plate *i*, sliding between the base *a* and stud-plate *o*, and having a projection, 2, extending up through a mortise in the stud-plate *o*, in combination with the tumber *t*, swinging upon such

(No Model.)

R. FLOCKE.

73

SATCHEL LOCK.

No. 279,733. Patented June 19, 1883.

No. 120.
Power
to
Peddicord

p. 73

Fig. 1.

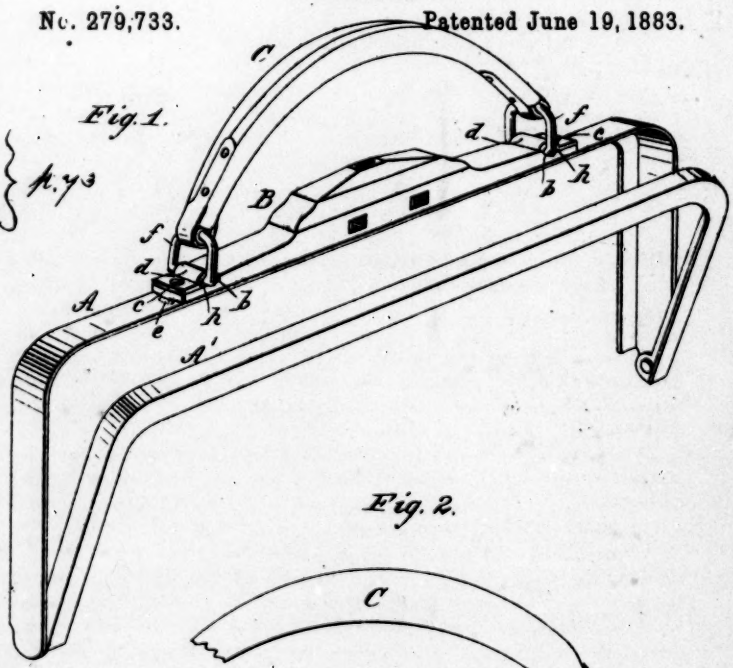


Fig. 2.

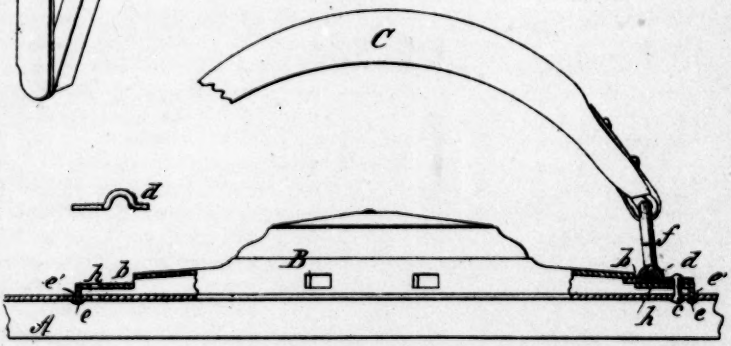


Fig. 3.

WITNESSES:

Donn Twitchell

C. Sedgwick

INVENTOR:

R. Flocke

BY

ATTORNEYS.

stud-plate, and the yielding presser *u*, substantially as and for the purposes set forth.

Signed by me this 16th day of April, A. D. 1875.

GUSTAVE BERNHEIM.

Witnesses:
GEO. T. PINCKNEY.
CHAS. H. SMITH.

(Here follows diagram marked page 73.)

74 UNITED STATES PATENT OFFICE.

ROBERT FLOCKE, of Newark, New Jersey, assignor to R. Neumann & Co., of New York, N. Y.

Satchel-Lock.

Specification forming part of Letters Patent No. 279,733, dated June 19, 1883; application filed April 25, 1883. (No model).

To all whom it may concern:

Be it known that I, Robert Flocke, of Newark, in the county of Essex and State of New Jersey, have invented a new and improved satchel-lock, of which the following is a full, clear, and exact description:

My invention relates to that class of satchel-locks that hold the handle-rings, and it consists, principally, of the employment of suitable clips for holding the rings upon the upper side of the lock case or plate, at or near its ends.

The invention also consists in attaching the clips to the lock box or case by means of proper joints and rivets, which latter, by preference, at the same time serve to attach the lock box or case upon the satchel-frame. In most cases the lock or lock plate will be provided with points adapted to be passed through suitable orifices made in the frame, and to be headed upon the under side of the frame for holding the lock box or case, and this, in combination with the clips, also constitutes a feature of my invention.

Reference is to be had to the accompanying drawings, forming part of this specification, in which similar letters of reference indicate corresponding parts in all the figures.

Figure 1 is a perspective view of my invention. Fig. 2 is a sectional side elevation of the same, showing one of the clips ready for attachment, the lock box or case being shown attached to the frame by the headed points; and Fig. 3 is a detailed view, showing a modification.

The satchel-frames A A′ may be of the ordinary or of any approved form.

The lock box or case B is slotted near its ends at *b b*, as shown clearly in Figs. 2 and 3, each slot to receive one end of the clips *d d*, that hold the rings *f f* of the handle C, and the lock is by preference also formed or provided with the points or rivets *e e*, that form in-

dependent attachments for the lock to the frame by being headed in suitable orifices, *é é*, in the frame A, as will be understood from Fig. 2.

The clips *d d* might be attached to the lock box or case in various ways, as by rivets at both ends, or by points formed on them, to be clinched to or within the lock box or case, or by small openings in the lock to act in conjunction with heads or claws formed on the clips; but I prefer to attach them by means of the said slots *b b* and the rivets *c c*, that pass down through the lock box or case, and through the frame A, so that only the two rivets are required for attaching the handle C and the lock B to the satchel.

For making the lock box or case symmetrical at its ends, I prefer to depress the lock or plate from its extremities to the slots *b b*, to form the seats *h h*, on which the clips *d d* rest when in place, as shown in Figs. 1 and 2; but instead of this the ends of the lock box or case might be made in a continuous slope and slotted, as shown in Fig. 3, the entering ends of the clips being somewhat lengthened to properly pass through the slots *b b*, and the other ends thereof shaped to properly fit upon the lock box or case, as will be understood from said figure.

In attaching the lock B upon the frame A the points *e e* will be passed through the opening *é é* in the frame and headed upon the under side of the frame, as shown in Fig. 2, which holds the lock box or case in proper adjustment while the bag-maker attaches the bag to the frames. The bag having been attached to the frame, the bag-maker attaches the handle C by means of the clips *d d* and rivets *c c*, which he can easily do, and without disturbing the position of the lock box or case upon the frame A.

By using the clips *d d* a practical and neat attachment of the handle is effected, and the necessity of making recesses upon the under side of the lock box or case for holding the rings between it and the frame, as is now the practice, is avoided by their use; and, furthermore, the method of securing the handle and lock box or case to the satchel by means of the clips *d* and rivets *c e* is cheap and very simple, and enables the bag-maker to easily attach his own handles to the satchel without returning the bag to the frame and lock maker, as is now usually the practice.

It will be understood that the points *e e* might be omitted, if desired, since the rivets *c c* alone effect a secure attachment of the lock box or case upon the frame, and that the clips *d d* might be applied to any form of lock case or plate and not depart from the principle of my invention.

Having thus described my invention, what I claim as new, and desire to secure by letters patent, is—

1. The lock box or case B, having openings *b*, in combination with the clips for holding the rings *f*, substantially as described.

2. The lock box or case B, having slots *b*, in combination with the clips *d*, that enter said slots at one end, and are held at the other by the rivets *c*, that hold the lock in place upon the satchel, substantially as described.

3. The lock box or case B, formed with the slots *b* and seats *h*, in combination with the separate clips *d*, for holding the rings *f* upon the lock box or case, substantially as described.

4. The lock box or case B, having the points *e*, adapted to be headed in orifices made in the frame, in combination with the separate clips *d*, for attaching the handle-rings, substantially as and for the purposes set forth.

ROBERT FLOCKE.

Witnesses:
PHILIP SOMMER.
RICHARD SATTLER.

76 At a circuit court of the United States held in and for the southern district of New York, at the court-house, in the city of New York, on the 13th day of November, 1885.

Present: Hon. Nathaniel Shipman, judge.

WILLIAM ROEMER
vs.
THOMAS B. PEDDIE.

Motion having been made by defendants to strike out and suppress certain testimony given on behalf of the complainant and the same coming on to be heard, after hearing Frederic H. Betts in support of said motion and A. V. Briesen, Esq., opposed, and after reading the record of evidence herein, it is ordered that the following questions, answers, and offer of exhibits and exhibits themselves be, and hereby is [are], stricken out and suppressed, viz:

76*a* Questions and answers 23 and 24 in the examination of witness William Roemer, and questions and answers 29th, 30th, 31st, 32nd, 33rd, and 34th in examination of same witness (all in rebuttal), and the exhibits and testimony referred to in question 31 and offered in evidence after answer to question 32nd.

Also questions and answers 7, 8, 9, in examination of Gustav Bernheim, and the offer and exhibit of alleged testimony of Gustav Bernheim, alleged to have been given in Simon *v.* Newman, offered in evidence after question 9.

(S'g'd) N. SHIPMAN, *Judge.*

(Endorsed:) U. S. circuit court. William Roemer *vs.* Thomas B. Peddie. Order suppressing evidence. U. S. circuit court. Filed Nov. 14, 1885. Timothy Griffith, clerk.

76*b* Circuit Court of the United States for the Southern District of New York.

WILLIAM ROEMER, Complainant,
against
THOMAS B. PEDDIE *et al.*, Defendants. } In Equity.

Testimony for final hearing taken on the part of defendants, under and pursuant to the sixty-seventh rule in equity and the statutes in such case made and provided, before Sam'l R. Betts, United States commissioner, by consent.

NEW YORK, *March 10th*, '85.

Met pursuant to notice of hearing hereto annexed.

Present: Messrs. Briesen & Steele, for complainant, and J. E. H. Hyde, for defendants.

HENRY L. BREVOORT, a witness called on behalf of defendants, and having been first duly sworn, deposes and says:

1 Q. What is your name, age, residence, and occupation?

77 A. My name is Henry L. Brevoort; my age is 36 years; I live in Brooklyn, N. Y., and I am by occupation an engineer.

2 Q. What familiarity have you had with mechanical matters, and what experience, as an expert, in patent cases?

A. From the time I was sixteen, when I began working in a machine-shop, I have been interested in mechanical matters. From that time until I was about twenty-four I was engaged continuously in building and designing machinery. For the last ten or eleven years I have been almost exclusively occupied in examining patents and patented devices, and during this period I have been called upon very frequently to testify in suits relating to patents, and I have so testified in between 300 and 400 cases. I am familiar with structures relating to locks, having been employed for a long time by the Sargent & Greenleaf, the Yale, and the Holmes Lock Companies. I have prepared many specifications and testified in very many cases relating to locks.

3 Q. Have you read and do you understand the letters patent granted to William Roemer, No. 195,233, of September 18, 1877, on which this suit is brought?

A. I have read the patent carefully, and I think that I understand what is described and claimed therein.

4 Q. Will you please state what you understand to be the device described and claimed in those letters patent?

A. The patent of Roemer, No. 195,233, is for a combined lock and handle for traveling bags. The specification of the patent states as follows: "This invention relates to a new construction of lock case for traveling bags, satchels, and the like, whereby the same is made to retain the rings which connect with the handle, to dispense with an extended bottom plate, and yet to leave the rings movable in

their bearings." The specification then goes on and describes
78 the structure of the article, which consists of a case made of sheet-metal containing within itself the locking mechanism and having at each end notches for the handle rings. No bottom plate is used, but the lock case itself is secured to the frame of the bag and serves both for containing the lock mechanism and for holding the handle rings. Thus these rings are held by the direct instrumentality of the lock case itself, which case in this arrangement of Roemer serves two purposes, to wit, that of holding the lock mechanism and handle rings. The claim of the patent is for a lock case having notches near its ends to receive and hold the handle rings. Thus the invention consists of a bag lock without a bottom plate; the case of which lock, besides containing the locking mechanism, is also adapted by being notched to hold the handle rings. I think that this view of the Roemer patent is the correct one, and I find that this same view is taken by his honor Judge Wheeler in the case of Roemer *vs.* Simon, Federal Reporter, volume 20, page 197. In this opinion I find as follows, referring to the Roemer patent: "But the substance of it is understood to be the single attachment of the lock and handle to the frame and taking advantage of the walls of the case to strengthen the frame at the handles." Thus, as I understand it, the views that I have taken are substantially the same as those expressed by the learned judge in his opinion. I am still further fortified in the view I have taken of the Roemer patent by the following reference to the file-wrapper and contents of the said Roemer patent. In the original specification I find that by an amendment dated August 30, 1879, that the following words were inserted in the specification: "To dispense with an extended bottom plate." This amendment was made apparently to get around the reference that the office gave to the applicant in a letter dated August the 20th, 1877, which reference was the patent of Simon, May 2d, 1876, No. 177,020. From my own understanding of the Roemer patent, fortified by the opinion of Judge Wheeler and the statements contained in the file-wrapper and contents, I am
79 clear in my understanding, as before given, of the Roemer invention, to wit, that it is for a lock case without an extended bottom plate, which case contains the locking mechanism and also the notches to hold the rings by means of which the handle is attached to the lock case.

4*a* Q. You have referred in your answer to a patent cited by the Patent Office as an anticipating reference to the application of Mr. Roemer for his patent in suit, namely, letters patent No. 177,020, dated May 2d, 1876, granted to Wm. Simon. Have you read and do you understand those letters patent?

A. I have read the patent of Simon, referred to in the question, and I understand what is shown and described in the said patent.

Defendant's counsel offers in evidence a printed Patent Office copy of the specification and drawing of said letters patent of William Simon, and it is consented by counsel that the same may be treated and considered as a duly certified copy.

5 Q. Please state what you understand to be described and claimed in said letters patent of William Simon, and what was the state of the art at the time of the application of Mr. Roemer for his letters patent in suit.

A. As I understand it, long before the Roemer patent was thought of, it was old to attach to the frame of a bag, at the centre thereof, locks of various kinds and structures, these locks always being in a case which occupied the central portion of the top frame of the bag. The handle rings in such bag were usually attached by separate plates, one for each ring, independently of the lock case. Thus three separate things had to be attached to the bag frame—the lock case and the two handle-securing plates. With this state of the art, as I understand it, it occurred to Simon that if he made a long plate, attached the lock case to the centre of this plate, and pro-
80 vided the plate near its ends with handle-securing devices, that then he would have to unite only one thing to the bag frame, that one thing carrying the lock case and the handle-attaching devices. This is practically what is described in the patent of Simon referred to in the question. The Simon patent shows an extended bottom plate much longer than the lock case, which case is secured on the plate at the centre thereof, and which plate is provided near its ends with a struck-up concavity or recess to receive the ring loops for the handle. This patent of Simon is also, I understand it, referred to in the opinion before quoted of his honor Judge Wheeler where he says as follows: "If the invention had been of an attachment of the lock directly to the handles only, or of the extension of the top plate of the lock case along the frame to receive the handle rings, it would have been anticipated;" and I presume he meant it would have been anticipated by the Simon patent.

6 Q. Then, in view of the state of the art as just described by you, what do you understand to be the distinctive feature of Mr. Roemer's patent in suit?

A. I understand it to be dispensing with an extended bottom plate and making the lock case in such form that it could contain the locking mechanism, and also the notches for the handle rings.

7 Q. Have you seen the lock which was put in evidence in the suit of William Roemer *vs.* Edward Simon *et al.* by the defendants, and called "Exhibit Havell Lock Box?" And, if so, please state whether, in your opinion, in view of that lock box, it required invention to devise the structure shown and described in the Roemer patent in suit, giving your reasons for any opinion you may express.

Objected to as incompetent.

A. I do not think it required invention, and I have examined the old lock box referred to, on which this opinion is based. The Roemer lock is merely such a modification of the Havell lock box as any mechanic who is accustomed to dealing with sheet
81 metal would naturally have made when carrying forward the idea contained and embodied in the old "Havell lock box."

8 Q. If it were a part of the state of the art at the time of Mr. Roemer's application for his patent in suit to fasten the handle rings of a bag to the bag frame by struck-up plates having the form of notches in them, in which the rings were placed, such as the form of notches which Mr. Roemer placed in the ends of his lock box, shown in the patent in suit, would it or not alter your opinion just expressed, that it did not require invention to devise the Roemer lock box in view of the Havell lock box?

Same objection.

A. It certainly would not alter my opinion, except so far as my opinion would be still further confirmed and strengthened by the existence of such articles, for such old devices would show that there was nothing new in giving strength and stiffness to the parts by forming the notches across pieces of metal which were strengthened by being bent into convex shape or form.

9 Q. Is or is it not very old to give strength to sheet metal by binding it into such convex form as might be called or illustrated by a struck-up bottom plate of a lock?

A. It was very old, and this is shown by reference to "Ex. Fisher Bag" and the registration of design of Fisher's No. 293,557, of 1875, which were offered in evidence in the suit of William Roemer *vs.* Edward Simon *et al.* The idea is much older than this, but the Fisher exhibit is an apt illustration of the embodiment of this well-known principle.

10 Q. Have you examined the lock and frame offered in evidence by the complainant in this suit and marked "Complainant's Ex. Peddie Satchel?"

A. I have, and I understand its structure and mode of operation.

11 Q. Please state whether, in your opinion, that lock ex-
82 hibits the structure described and claimed in the Roemer patent in suit, and give your reasons for any opinion you may express.

A. I am clearly of the opinion that the lock marked "Peddie satchel" does not contain the invention of the Roemer patent. My reasons for these opinions are as follows: The "Peddie satchel" consists of a long or extended bottom plate, with notches at the ends for the loops of the handle. Attached to this extended bottom plate and midway of its length is the lock case, which case is much shorter than the extended bottom plate, and which lock case likewise contains the entire locking mechanism, which is thus located entirely above the upper surface of the extended bottom plate. Thus in the "Peddie satchel," there are no notches made in the sides of the lock case, which notches hold the handle rings; but on the other hand, the notches are in the bottom plate, which bottom plate has attached to it a comparatively short and unnotched lock case. The Roemer patent expressly states that it is an essence of the invention therein described to dispense with an extended bottom plate and to make the notches in the sides of the lock case. Now, as the "Peddie satchel" has no notches in the lock-case for the handle rings and as it has an extended bottom plate, it cannot,

in my judgment, be said to contain the invention which is set forth and claimed in the Roemer patent.

12 Q. I now read you cross-questions 30, 31, and 32, put to the complainant's expert, Mr. Drake, on his examination-in-chief, and the answers thereto. Please state whether or not you agree with any of the opinions he expresses in those answers, and, if so, which.

A. I do not agree with Mr. Drake in his statements where he says that the "Peddie satchel" is the Roemer lock and not the Simon lock, simply because it has a bottom plate which is struck up. I agree with him in the statement that the "Peddie satchel" lock is the Simon lock, with a struck-up bottom plate; but I think that it is perfectly clear that the striking up of the bottom plate of Simon does not transform that lock into the Roemer lock, as I understand the Simon patent. The extended bottom there shown
83 is partly struck up in its manufacture, the patent saying as follows: "Just beyond the ends of both the lock and the fastening the lock plate A is struck up from below, so as to form a concavity or recess, I, on top of the plate to receive the ring loops." What Roemer did was not to strike up the bottom plate of Simon, but to dispense with it altogether, and make the lock case itself carry the ring loops as well as the working parts of the lock, thus forming a structure unlike the Simon lock and the "Peddie satchel."

13 Q. I now read you the decision of Judge Wheeler on the motion for injunction in the three cases of William Roemer *vs.* Neumann, Roemer *vs.* Peddie, and Roemer *vs.* Headley, and which was read to Mr. Drake, and please state whether you agree with that opinion.

A. I fully agree with Judge Wheeler in the conclusions expressed by him in his opinion.

14 Q. Have you seen the other locks offered in evidence by the complainant in the four cases in which we are now taking testimony and marked, respectively, "Complainant's Exhibit Headley Satchel," "Complainant's Exhibit Peddie Satchel," and "Complainant's Exhibit Küpper Frame and Lock?"

A. I have.

15 Q. Do you or not agree with Mr. Drake, the complainant's expert, in his answer to the 7th and 8th cross-questions on his examination-in-chief, which I now read you?

A. I agree with Mr. Drake fully.

16 Q. And does or does not what you have said in regard to the "Exhibit Peddie Satchel" apply equally to the other three exhibits specified in the 14th question?

A. It does.

Adjourned to Thursday, March 19th, 11 a. m.

84 NEW YORK, *March* 19, 1885.

Met pursuant to adjournment.

Present: Parties as before.

Examination of HENRY L. BREVOORT continued:

17 Q. Have you read the 5th question put to Mr. Drake, the complainant's expert, on his examination and his answer thereto?

A. I have.

18 Q. Please state whether or not you agree with Mr. Drake in his statement that Complainant's Exhibits Model No. 1 is a representation of that which is shown and described in the Simon patent No. 177,020, and please give any reasons which you may have for the views which you may express.

A. I do not think that Complainant's Exhibit Model No. 1, which I carefully examined and the construction of which I understand, is a fair representation of the Simon lock. My reasons for this opinion are as follows: In the Simon patent it is there stated that the invention consists in placing the lock fastenings and ring loops all upon a single plate instead of making such plate just long enough to receive the lock alone, the Simon plate being a long or extended plate, the old plate being a short plate, just long enough for the lock. Now, Complainant's Exhibit Model No. 1 has the Simon long or extended plate, but it has also between the upper surface of this plate and the lock mechanism a short plate, which is the plate that by Simon's invention is dispensed with, and to this extent Complainant's Exhibit Model No. 1 is an unfair representation of the Simon structure. I can see no possible use which the short plate can subserve which could not equally as well be served by the extended bottom plate. In fact, the short bottom plate is mere surplusage.

19 Q. Please state also whether you agree with Mr. Drake in the statement made, in the answer to the 38th and 39th redirect
85 questions, that the Complainant's Exhibit Model No. 3, if placed upon a plate like the extended plate of Complainant's Exhibit Model No. 1, — would that, in your opinion, be the device shown and described in that Simon patent?

A. Yes; it would if the extended plate had the features of the extended plate of Simon and the short plate now forming the base for the lock case was removed. In fact this is just what Simon taught a person to do. Simon's idea consisted in removing such short bottom plates, an example of which is found in Complainant's Exhibit Model No. 3, and substituting for them long or extended bottom plates which could perform the function of carrying the ring loops for the handle. Of course, if Complainant's Exhibit Model No. 3 was placed bodily, base plate and all, upon an extended base plate, the Simon structure would not result, for the short base plate would not be dispensed with. In either case practical structures would result—that is, if Complainant's Exhibit Model No. 3, either with or without its short base plate, were fastened upon the Simon plate. If Complainant's Exhibit Model No. 3 had the lower

short plate now upon it retained and this structure was then mounted upon the Simon extended plate the result would not be the Simon lock, and the short lower plate would be mere surplusage and would be of no practical use whatever.

20 Q. Please state whether you agree with Mr. Drake in his statement in answer to the 5th question that the Exhibit "Peddie Satchel" is as similar to the device shown and described in the Roemer patent in suit as is Complainant's Exhibit Model No. 2, and give your reasons for any answer you may make.

A. I don't agree with Mr. Drake. In the "Peddie satchel" there is an extended bottom plate and the catch and locking mechanism is placed entirely above this extended bottom plate in a case of its own. Now, in the complainant's model No. 2 the lock and catch mechanism is partly in a sliding box on top of the lower half of the exhibit, and the operation of the sliding box operates the catch mechanism, which is placed in the
86 lower half of the exhibit. Thus in the model No. 2 there is not a single extended bottom plate with a lock box on top of it, but both the upper and the lower sections of the model No. 2 contain and inclose portions of the lock mechanism. In this connection I call attention to the fact that in the "Peddie satchel" the catch openings are in the lock case on top of the extended bottom plate, while in the model No. 2 they are in the lower sections of the compound device. It is clear from the above that the Exhibit Model No. 2 is clearly the Roemer lock with immaterial modifications, while the "Peddie satchel" is clearly not the Roemer lock or any form or modification thereof.

HENRY L. BREVOORT.

Adjourned till Wednesday, March 25, 1885, at 2 p. m.

WEDNESDAY, *March* 25, 1885.

Adjourned to Thursday, April 2d, 1885.

THURSDAY, *April 2nd*, 1885—11 a. m.

Adjourned to Thursday, April 9, 1885, 11 a. m.

THURSDAY, *April* 9, 1885—11 a. m.

Met pursuant to adjournment.
Present: Counsel as before.

Cross-examination of HENRY L. BREVOORT by A. v. BRIESEN, Esq., counsel for complainant:

21 X Q. What is a lock case, in your opinion?

A. A lock case is, as I understand it, that portion of the device which surrounds and contains the lock mechanism.

87 22 X Q. Is the lower part of defendant's structure part of the lock case, as you have defined it?

A. It is not.

23 X Q. It does not, in your opinion, assist in surrounding and containing the lock mechanism; is that it?

A. It does not surround or contain the lock mechanism.

Answer objected to as not responsive.

24 X Q. Must a lock case, in order to meet your definition, be open on one side?

A. No; it may be, though.

25 X Q. Then in defendants' structure what you term the lock case is open on one side, is it not?

A. It is open when it is in the hands, when placed upon an article. It may be closed by the surface of such article, as in the case of a mortise lock for a door.

26 X Q. That which you hold in your hand now, to wit, the article marked "Peddie satchel," is not a lock case pure and simple, then, with its contents, but is, in your opinion, a lock case, and also distinct therefrom, a bottom plate?

A. The thing I hold in my hand is a lock case, containing the locking mechanism. This lock case and locking mechanism is attached to a bottom plate.

27 X Q. And that bottom plate, in your opinion, does not assist in containing or surrounding the lock mechanism?

A. No; it merely forms a base upon which the lock mechanism is located. It might be located upon any other base of other shape or other nature.

28 X Q. Will you please take that bottom plate off the "Peddie satchel" and see whether an operative lock case and lock mechanism remain?

A. I have taken it off; an operative mechanism does remain, which would be efficient to hold the bag shut or allow it to be open.

Answer objected to as not responsive.

88 29 X Q. Does not the tumbler and the key post constitute part of the lock mechanism of the "Peddie satchel?"

A. It constitutes a device by which the locking mechanism can be held in the locked position by a key. The locking or fastening together of the lock and the striker's plate is done entirely by the portion which I now have in my hand, and which I call the lock case.

30 X Q. (Question repeated.)

A. No, it forms no part of the locking mechanism, which is directly concerned in holding the lock case and striker plate in the closed position.

31 X Q. You have testified that the "Peddie satchel" without the bottom plate is a complete lock case and lock. Will you tell us what provision there is in that instrument for holding the spring in position and preventing its falling out?

A. None, except whatever surface the lock and lock case may be placed upon.

32 X Q. Is the spring part of the lock mechanism of the "Peddie satchel?"

A. Yes.

33 X Q. Does what you have termed the bottom plate of the "Peddie satchel" assist in holding that spring in place?

A. The surface of that plate serves to hold the spring in place.

34 X Q. But you are clear, are you not, that that plate does not assist in surrounding and containing any part of the lock mechanism?

A. Yes; it only forms a base, as would be formed by any device upon which the lock was placed.

35 X Q. When you say, in answer to cross-question 22, that a lock case surrounds the lock mechanism, and also contains the same, do you make any distinction between "surrounding" and "containing;" if so, what?

A. No special distinction. The walls of the lock case are those parts which protect the lock mechanism from injury.

36 X Q. When you say a lock case contains a lock mech-
89 anism, do you mean to testify that all that which contains the lock mechanism is the lock case?

A. As I understand the question—yes. I do not include, of course, the surface upon which the lock goes or is fastened.

All after "yes" objected to as not responsive.

37 X Q. If your answer to the 7th question is correct, does it not follow that you disagree with Judge Wheeler, who sustained the complainant's patent in the face of the Havell lock, or else that the court did not assume the Havell lock to anticipate complainant's patent?

Latter part of the question objected to as incompetent.

A. Yes.

38 X Q. In answer to the 8th question, did you assume that the Havell lock anticipated the complainant's patent?

Objected to as immaterial.

A. I assumed, as I before stated, that from my view of the matter there was no substantial invention in the Roemer lock over and above the Havell lock box.

39 X Q. When did you inspect that Havell lock box?

A. I think at the time when I made an affidavit in this case, though I do not remember the time distinctly.

40 X Q. If the Havell lock did not anticipate the Roemer patent, but the Simon patent, No. 177,020, did, would you or not find a patentable invention in the Roemer patent over and above the Simon patent?

A. There is a patentable invention in Roemer over and above Simon when the Havell lock box is disregarded.

90 41 X Q. In seeking the essence of an invention in a patent, do you look at the claim of the patent or not?

A. I look at the claim, the specification and the drawing.

42 X Q. What do you understand by the essence of the invention in a patent?

A. That which the patentee wanted to patent.

Cross-examination closed.

Redirect by Mr. HYDE:

43 Red. Q. If there were no bottom plate at all to a bag lock, but the lock case containing the locking mechanism were mounted directly upon the frame of a bag to which the tumbler and key post were secured, would that make the bag frame part of the lock case or not?

Objected to as leading and immaterial, no exhibit corresponding with the question being before the witness.

A. It would not.

44 Red. Q. Do you find that Mr. Roemer in his patent in suit makes a distinction between the lock case and the bottom plate of a lock or not, or that he speaks of the bottom plate as a part of the lock case?

Objected to as leading and incompetent.

A. In the patent it is said that the extended bottom plate is dispensed with and the notches for the ring loops are in a "lock case." Thus he does distinguish between a lock case and a bottom plate.

45 Red. Q. And is that distinction correct or not?

Objected to as incompetent.

A. Yes.

91 46 Red. Q. In answer to cross-question 38 you stated that in answering the 8th question you assumed that in your view there was no substantial invention in the Roemer lock over and above the Havell lock box, and I call your attention to the fact that the 8th question, which I now read to you, called for a comparison between a modified Havell lock box, in accordance with an assumed prior state of the art, and now ask you whether in your answer to 38 X Q. you referred to such modified Havell lock box or the Havell lock box itself.

Objected to as incompetent.

A. I referred to the Havell lock box, as modified by that which was well known in the art.

Redirect closed.

Adjourned to Tuesday, April 14th, 11 a. m.

NEW YORK, *May* 5, 1885.

Met pursuant to adjournment.
Present: Counsel as before.

Recross-examination of Mr. BREVOORT by Mr. A. V. BRIESEN:

47 Re-X Q. To what do you refer as "well-known in the art," in your last preceding answer?

A. I refer to the fact that corrugating or stiffening sheet metal by bending it into a semi-tubular form has long been known and practiced.

48 Re-X Q. To any other fact beside that?

A. I think I have seen plates to hold bag-handle rings, on bag frames, before the Roemer patent, which were struck up and notched, but I cannot fix the date, and merely remember the matter indistinctly. The above may have been well known to those
92 engaged in the manufacture of bags. I personally do not know whether it was well known or not.

49 Re-X Q. To any other fact?

A. I think not.

50 Re-X Q. I will read you the answer of defendant's expert witness, Faber du Faur, to the forty-first redirect question in his examination in the suit of Roemer *vs.* Simon, which involved the same patent here in suit. Was or was not your reference to the state of the art in answer 46 based upon the facts to which Mr. du Faur refers in the last part of said answer?

Objected to as incompetent.

A. No.

51 Re-X Q. I will now read you from the same record the answer of the same expert witness to the 43d redirect question. Was or was not your reference to the state of the art in answer 46 based upon the facts to which Mr. du Faur refers in the last part of said answer?

Same objection.

A. Yes; I had these facts in mind when I gave my answer.

Recross closed.

Re-redirect examination:

52 Re-re-D. Q. If it were a state of the art at the time of Mr. Roemer's invention described in the patent in suit to make plates to fasten the bag-handle rings to bag frames, such plates being struck up and notched in the sides, as referred to in your answer to 48 recross, would it, in your opinion, require invention to devise the bag lock described in Mr. Roemer's patent in suit, taking into
93 consideration also that it was also old to fasten the handle rings to the bag frames by the lock case itself, as shown in the Havell lock box?

Objected to as leading and as not redirect examination, and also as the fact inquired about was before the court in the Simon case and not denied therein.

A. No.

Examination closed.

HENRY L. BREVOORT.

Subscribed and sworn to before me this 5th day of May, 1885.
SAM'L R. BETTS,
United States Comm'r, S. D. of N. Y.

TUESDAY, *April* 14*th*, 1885.

Met pursuant to adjournment.
Adjourned until Monday, April 20th, at 11 a. m.

MONDAY, *April* 20*th*, 1885.

Met pursuant to adjournment.
Adjourned to Monday, April 27th, at 11 a. m.

NEW YORK, MONDAY, *April* 27*th*, 1885.

Met pursuant to adjournment.
Present: Counsel as before.

ROBERT W. CHAPMAN, a witness called on behalf of defendants, and having been first duly sworn, deposes and says:

My name is Robert W. Chapman; my age is 41 years;
94 I reside at No. 52 Tichnor street, Newark, New Jersey; my occupation is foreman with T. B. Peddie & Co., and have been there for the last twenty-five years, off and on.

1 Q. What is the business of T. B. Peddie & Co.?

A. Manufacturers of trunks and bags.

— Q. What are your duties as foreman?

A. To superintend a department of manufacture.

3 Q. Are you familiar or not with the different kinds of bag trimmings used by the bag manufacturers generally?

A. I am.

4 Q. How long have you been so familiar with them?

A. Twelve or fifteen years.

5 Q. Please look at the piece of metal stamped into the shape of a dog's head which I now show you and state if you know what it is.

Objected to as immaterial and objected to on the ground that the witness is not named in the answer as having knowledge.

A. It is a dog's head used to attach handles to bags in connection with a ring.

6 Q. In what part of that dog's head was the ring secured?

A. Through the openings in the side under the nose.

7 Q. How is the dog's head fastened to the bag, and to what part of the bag?

A. It is fastened with two rivets passing through the frame of the bag and riveted thereto.

8 Q. How many of those dog's heads and rings are used on each bag to fasten the handle?

A. Two; one on either end of the handle.

9 Q. How long have you known such shaped pieces of metal to be used to fasten the handle rings to bag frames?

A. Since 1870.

95 10 Q. Can you produce other specimens of such dog's head?

A. I can.

Witness produces another dog's head similar to the one shown him.

11 Q. Has the firm of T. B. Peddie & Co. used such dog's head to fasten bag handles to the frame?

A. They have.

Objected to as leading.

12 Q. As early as what year did they use such articles for that purpose, to your knowledge?

A. 1870.

13 Q. Have they ever used them since that year?

Objected to as leading.

A. They have.

14 Q. In small or considerable quantities?

A. Small quantities.

15 Q. Have they sold during that period bags with such attachments on them?

A. They have.

16 Q. From whom, if you know, did that firm procure such attachments, or did they make them themselves?

A. They bought them from Stevens, Roberts & Havell, of Newark.

17 Q. Can you produce any memoranda or bills of such attachment procured by T. B. Peddie & Co.?

A. I can. Here is one of 1870, of 1875, and of 1876.

Defendants' counsel offers in evidence the two dog's heads identified by the witness, and they are marked "Def'ts' Exhibit Dog's-Head Attachment," S. R. B., U. S. comm'r, Ap'l 27, '85.

Objected to as incompetent and immaterial.

96 Also the three bills produced by the witness for such dogs' heads, and they are marked, respectively, "Def't's Exhibit Dog's Head, Bills Nos. 1, 2, and 3," S. R. B., U. S. comm'r, Ap'l 27, '85.

Same objection.

18 Q. Please look at the three articles which I now show you and state what they are, if you know.

A. I know them to be handle attachments, to fasten handles to bag frames.

19 Q. What, if anything, went in the crease or loop which is struck up in a semi-circular form at one end of these last attachments?

A. A ring, to fasten the carrying strap to.

20 Q. How were these attachments fastened to the bag, and to what part of the bag?

A. Riveted to the bag frame.

21 Q. How many of those attachments were there to each bag?

A. Two.

22 Q. How long have you known of such attachments?

A. Since 1871, the date of the patent stamped on them.

23 Q. Who made and used such attachments, if you know?

A. Edward Simon & Bros., of Newark and New York.

24 Q. State, if you know of your own knowledge, whether or not it is a common thing among manufacturers of bag trimmings and other metal workers to strengthen metal plates by striking them up so as to give them an angular shape, such as is shown in those five attachments identified by you?

Objected to as leading and immaterial.

A. I know it is a common thing——

25 Q. State how long you know it to have been a common thing to do that.

97 A. As long as I have been in the bag business—for the last 25 years.

Defendant's counsel offers in evidence the three attachments last shown the witness, and they are marked "Defendant's Exhibit Simon Handle Fastenings," S. R. B., U. S. Commissioner, April 27, 1885.

Adjourned to Tuesday, May 25, at 11 a. m., the witnesses Brown and Chapman to be then produced for cross-examination, and the right of objection being reserved, defendant's time to be extended accordingly.

TUESDAY, *May* 5, 1885—12 a. m.

Cross-examination of the witness, R. W. CHAPMAN, by A. V. BRIESEN, Esq.:

26 X Q. Of whom did you get the three bills which you produced?

A. Do you mean the manufacturer of the goods?

27 X Q. Who gave them to you before you produced them here?

A. The clerk in the office, James Rennie, in T. B. Peddie's office.

28 X Q. Do you know in whose handwriting those bills are?

A. I do not.

29 X Q. Do you know how Mr. Rennie got them?

A. By searching for them amongst a miscellaneous collection——

30 X Q. Where did he search, if you know?

A. Amongst the miscellaneous collection of old bills stored away.

31 X Q. I wish to know how he got them in the first instance, if you know?

Objected to as fully answered.

98 A. When those goods came in he was not employed there and he did not get them. They came in with the goods.

32 X Q. Did you see these bills come in with the goods?

A. I did not.

33 X Q. Then why do you say, in answer to X Q. 31, that they came in with the goods?

A. Because it is the usual practice to send in bills with the goods.

34 X Q. And that is all that you know about those bills, is it not?

A. Yes.

35 X Q. Where did you get these two particular dog's heads which you have produced? I mean who gave them to you before you brought them here?

A. I went into the office and asked for them of the boy in charge.

36 X Q. When was that?

A. Just before I came down here to testify last time.

37 X Q. When last were such dog's heads delivered to T. B. Peddie & Co.?

A. I don't know.

38 X Q. Have you no information at all upon that subject?

A. I have not.

39 X Q. To the best of your knowledge and belief, when last were such dog's heads delivered to T. B. Peddie & Co.?

A. In 1876.

The witness before making the last answer examined the bills which he had produced.

40 X Q. Were the dogs which T. B. Peddie & Co. got of Roberts & Havell and of Stevens, Roberts & Havell all of the same size and shape?

A. They were not.

41 X Q. In what respect were they not?

A. Some of them were used as an ornament having what
99 is called a bar attached to it; others were used as an ornament without the bar, having lugs at the end others; were pierced with rivet holes having an opening in the sides to admit a ring. That is about all the shapes they were that I now remember.

42 X Q. Which of these three shapes did T. B. Peddie & Co. get in 1870, if you know?

A. I know they got the last-mentioned, pierced with rivet holes and with a place in the side for the rings, in 1870.

43 X Q. Which of these in 1875?

A. They got the same kind.

44 X Q. Which in 1876?

A. The same kind.

45 X Q. When did they get the first kind mentioned in your answer No. 41?

A. About the same year as the first bill there mentioned—1870. They got others. They used them indiscriminately—the ornaments.

46 X Q. Did they not get that kind in 1875 and 1876?

A. They did.

47 X Q. When did they get the second kind mentioned in your answer 41?

A. In 1870, to the best of my knowledge; also in 1875 and 1876.

48 X Q. Was not the second kind like those produced by you, excepting the openings in the sides?

A. No; they had openings in the sides.

49 X Q. Then I do not understand the difference between the second and third kinds. Please explain more fully.

A. The second kind have lugs at either end bent down; the third kind is like the exhibits with these holes in the side. (Witness points to the holes in the projections of the exhibit.)

40 X Q. At the time you answered the last previous question you handed me a dog's head. Will you please tell us whether that dog's head you so handed me is one of the kind T. B. Peddie & Co. bought of Havell's firms?

Objected to unless the year is stated.

A. It is.

100 51 X Q. In what year or years were such dog's heads bought by T. B. Peddie & Co.?

A. In 1885–'84, '83, '82, and back as far as you like.

52 X Q. In 1870, 1875, and 1876?

A. I don't know.

Counsel for complainant offers in evidence the dog's head referred to in Q. and Ans. 50 and 51, and it is marked "Complainant's Exhibit Peddie Dog's Head," S. R. B., U. S. com'r, May 5, 1885.

Objected to as immaterial and not cross-examination.

53 X Q. Do you know by whom the openings were cut in the sides of these two particular exhibits, both of which are marked "Defendant's Exhibit Dog's-Head Attachment?"

A. By the manufacturer.

54 X Q. Who was that?

A. Stevens, Roberts & Havell.

55 X Q. When did they cut these openings in these two particular exhibits?

A. I don't know.

56 X Q. Who gave you those two exhibits—who was the boy?

A. The office boy at Peddie's factory in Newark. I don't know his name.

57 X Q. Did they have the openings in the sides for receiving the rings at the time the boy gave them to you?

A. They did.

58 X Q. Who instructed you to ask the boy for them?

A. No one.

59 X Q. Why did you ask for them?
A. That I might testify about them intelligently.
60 X Q. How did you know you were to testify about them?
A. I was asked by one of the firm if I remembered that they had been used for the purpose.
101 61 X Q. Who asked you that?
A. Mr. George B. Jenkinson.
62 X Q. Did he show you one of them at the time he asked you that?
A. He did not.
63 X Q. What did you answer?
A. That I remembered it.
64 X Q. Was that all you answered?
A. Yes, sir.
65 X Q. What next did he say?
A. He asked if I would be willing to testify to it.
66 X Q. Where did the boy find those two exhibits, if you know?
A. I don't know.
67 X Q. Are you positive that these openings in the sides of the exhibit "Defendant's Exhibits Dog's-Head Attachments" were not cut at the establishment of T. B. Peddie & Co.?
A. I am positive they were not.

Cross-examination closed.

Redirect by Mr. HYDE:

68 Re-D. Q. Which of the three forms of dog's heads were used as ornaments?

Objected to as already answered in answer 41.

A. They were all used as ornaments.
69 Re-D. Q. Which of the three kinds were used to fasten the handle rings to bag frames by T. B. Peddie & Co.?
A. The one with the openings in the sides and pierced at the ends for rivets.
70 Re-D. Q. Do you mean like the "Defendant's Exhibit Dog's Head Attachment" or not?
A. I mean that kind.
71 Re-D. Q. Did you see such dog's heads on bags and used for such purposes by T. B. Peddie & Co.?

Objected to as leading and as the name of the witness is not in the answer.

102 A. I have.
71½ Re-D. Q. When first?

Same objection and as not redirect examination.

A. About 1870.
72 Re-D. Q. Were those bags sold by T. B. Peddie & Co. at that time?

Same objection.

A. They were—I presume they were and did not have anything to do with the sale of them.

73 Re-D. Q. About how many such bags did you see?

Same objection.

A. I saw one, anyhow—I don't know how many; we make them up in dozens lots—hundreds, thousands, perhaps.

74 Re-D. Q. Did you see more than one such bag?

Same objection.

A. Yes.

75 Re-D. Q. Did you see as many as a hundred at that time from 1870 to 1876?

Same objection.

A. I dare say I did.

76 Re-D. Q. Were they or not a regular article of sale by T. B. Peddie & Co.?

Same objection.

A. They were.

77 Re-D. Q. When these dog's heads were used as ornaments to what were they attached?

A. School bags, knapsacks, and various other articles.

103 78 Re-D. Q. When they were so used as ornaments to what part of the bag were they attached—the frames or the leather?

A. The front or flaps of the bag.

79 Re-D. Q. Were the dog's heads like the "Complainant's Exhibit Peddie Dog's Head," which has no opening in the sides used to fasten the handle rings to bag frames?

Same objection.

A. No.

80 Re-D. Q. Did you see the dog's heads like the "Def't's Ex. Dog's-Head Attachment" when they came from Roberts & Havell and Stevens, Roberts & Havell from 1870 to 1876?

Same objection.

A. I did.

81 Re-D. Q. Were they or not in the same shape and form as the "Def't's Ex. Dog's-Head Attachment" when they came from those firms?

Same objection.

A. They were.

82 Re-D. Q. Did the handle rings come with them or not?

Same objection.

A. They usually came with them.

83 Re-D. Q. Do T. B. Peddie & Co. make bag trimmings?

Same objection.

A. They do not.

Redirect closed.

104 Counsel for complainant gives notice that on the 8th of May, 1885, he will move before this court that redirect questions 71, 71½, 72, 73, 74, 75, 76, 80, 81, and 82, and the answers thereto, be stricken from the record because of the leading character of the said questions.

Recross-examination:

84 Re-X Q. Did T. B. Peddie & Co. get such dog's heads for ornamental purposes with pointed lugs?

A. They did.

Examination closed.

ROBERT W. CHAPEMAN.

Subscribed and sworn to before me this 5th day of May, 1885.

SAMUEL R. BETTS,
United States Commissioner, S. D. of N. Y.

Counsel for complainant requests the officer to furnish him with a certified copy of Chapeman's deposition for the purposes of the motion noticed above, and gives notice that he will read the same to the court in support of said motion.

Counsel for defendant requests the examiner to certify the original record of Chapeman's testimony, with the exhibits referred to therein, to the court for the purposes of said motion.

Defendant's time is extended to June 1st, 1885.

Adjourned to Saturday, May 9, at 11 a. m.

SATURDAY, *May* 9—11 a. m.

Adjourned to Friday, May 15, at 11 a. m.

105 MAY 15—11 a. m.

Met pursuant to adjournment.

Present: A. V. Breisen, Esq., of counsel for complainant, and C. W. Betts, Esq., of counsel for defendant.

GEORGE B. JENKINSON, a witness called on behalf of defendant, and having been first duly sworn, deposes and says:

1 Q. What is your name, age, residence, and occupation?

A. My name is George B. Jenkinson. I am 56 years old. I reside at No. 629 High street, Newark, N. J., and by occupation I am a trunk and bag manufacturer.

2 Q. How long have you been in that business?

A. Thirty-five years.

3 Q. Are you the defendant in the suit of Roemer *vs.* Peddie & Jenkinson, now in controversy in this court?

A. Yes.

4 Q. Please look at the "Defendants' Exhibit Dog's-Head Attachment" and state if you know what it is and when you first saw such attachment.

Any testimony of this witness as to prior knowledge or use is objected to on the ground that no notice of his name was given in defendants' answer.

A. This is an attachment used for the fastening of handles on bags, in connection with a ring to hold the handle. We bought these on August 26th, 1870, and used them shortly thereafter.

5 Q. How soon afterwards did you use them?

A. One month.

6 Q. Please state exactly how you used them one month after Aug. 26th, 1870.

106 A. We used them on the top of a frame in connection with rings to hold the handle. They were bought for that purpose and used as soon as we could thereafter.

7 Q. How were these dog's-head attachments fastened to the top of the bag frame?

A. Each dog's head was fastened with two small rivets through the top of the frame.

8 Q. How many dog's heads were so placed on each frame?

A. Two.

9 Q. Where were the rings placed which you say were used in connection with the dog's-head attachments?

A. In the slots on the end of the dog's heads. (witness pointing to the two semi-circular slots under the nose of Def't's Exhibit Dog's-Head Attachment).

10 Q. What were these rings used for that were fastened to the bag frame by means of these dog's heads?

A. To hold the bag handle. The bag handle was passed through the rings used in connection with the dog's head and one end of the handle was fastened to each ring.

11 Q. Were you connected with the defendant, T. B. Peddie, at that time?

A. In 1870 I had an interest in the business, not a full partner.

12 Q. Look at the bill marked "Def't's Ex. Dog's-Head Bill No. 1," and state if you know what it is.

A. The bill is for dog's heads similar to this exhibit "Defendant's Exhibit Dog's-Head Attachment," with the rings to be used in connection. The rings and dog's heads were gilt.

13 Q. Is that the original bill of the dog's heads purchased by Mr. Peddie while you were in business with him?

A. It is.

14 Q. What was done with the bag frames to which these dog's heads and rings were attached, as you have explained, in the year 1870?

A. They were sold.

15 Q. In what shop were these dog's heads attached to the frames in that year?

A. In T. B. Peddie's bag shop, in Newark.

107 16 Q. After this first purchase of dog's heads and rings like "Defendant's Exhibit Dog's-Head Attachments" did you know of any other purchases of such attachments by the defendant Peddie; and, if so, when?

A. I do; at intervals between August 26, 1870, and October 7, 1875. There may be some later.

17 Q. What was done with those dog's-head attachments that were subsequently purchased by the defendant?

A. They were used for fastening the handles on the bags in the same way that I have already described and were sold.

18 Q. Look at the "Defendant's Exhibits Dog's-Head Bills Nos. 2 and 3," and state whether you recognize them as some of the original bills of these dog's heads and rings purchased by the defendants and used by them as you have described.

Objected to as leading.

A. These are some of the original bills.

19 Q. How do you know that?

A. They were filed away at the time and we found them where they were filed. We have also a copy on our invoice book.

Direct examination closed.

Recess until 2.30 p. m.

Met after recess.

Present: Counsel as before.

20 Q. Have all the dog's heads you got from 1870–'75 been sold?

A. No, I think not; most of them have.

21 X Q. Have all the bags that were provided with such dog's heads been sold?

A. Yes.

108 22 X Q. Of whom did you get dog's heads like "Complainant's Exhibit Peddie Dog's Head"?

A. From Stevens, Roberts & Havell.

23 X Q. Not from Roberts & Havell?

A. The firm was changed three times, and I can't recollect the date of change.

24 X Q. When did you first get such dog's heads as "Complainant's Ex. Peddie Dog's Head"?

Objected to as not within the scope of the examination.

A. Some time shortly after Aug. 26, 1870, or it may be previous. I could tell by referring to our books exactly.

25 X Q. Do the bills to which you have referred in your testimony mention any such dog's head as "Complainant's Ex. Peddie Dog's Head"?

A. No.

26 X Q. How can you tell that?

A. The dog's heads with the slot for rings were always bought with the rings for the purpose of using on bags to hold the handle.

27 X Q. Is that your only reason for stating that these bills are not for the kind of dog's heads to which my question referred?

A. Yes.

28 X Q. What kind of rings were they that are mentioned on the bills?

A. What is called a wire D ring.

29 X Q. You said in answer to one of the direct questions that the dog's heads and rings were gilt. Were they all gilt?

A. All that were billed so.

30 X Q. How were the others?

Witness looks at a bill.

A. They were nickel.

31 X Q. What bill did you look at before answering that question?

109 A. They are marked "nickel" in a bill of 1876.

Objected to as not responsive.

32 X Q. (Question repeated.)

Witness looks at bill again.

A. I looked at a bill of Oct. 7, 1875.

33 X Q. Will you produce that bill?

A. I will not.

34 X Q. Did you stop putting dog's heads and rings on bags in about 1875?

A. I think we used them up to 1876 and perhaps later.

35 X Q. Why do you now make locks with ring-holders like those on "Complainant's Ex. Peddie Satchel" and not put on the dog's heads instead?

Objected to as not proper cross-examination, as irrelevant, and as calling for a matter of opinion.

A. We don't make locks like that.

36 X Q. Then why do you sell them like those on "Ex. Peddie Satchel" instead of those with the dog's heads?

Same objection.

A. Because we like them better and they sell better.

37 X Q. Are you the same George B. Jenkenson whose testimony is recorded on pages 217–238, inclusive, of defendants' printed record in the case of Roemer *vs.* Simon *et al.*?

A. I presume I am. The copy is there; of course, I can't tell whether it is true.

Witness looks at record in case of Roemer *vs.* Simon *et al.* and hands same back to counsel for complainant.

110 38 X Q. What did you mean in that testimony by your answer to the 168th question, which is as follows: "Re-X Q. 168. Then you mean, do you, that the Roemer lock has the bottom plate or box plate extend out far enough to receive the handle rings A—the Roemer lock has box plate extend out to take the handle rings"?

A. The Roemer lock box is in one piece and has the plate extended out to take handle rings. That was my meaning when I made this answer.

39 X Q. And that, of course, was also your meaning, was it not, when you answered the 166th and 167th questions in that deposition, which are as follows:

"166 Re-D. Q. What do you mean by the words 'the same principle' in your answer to 130 Re-D. Q.? A. I mean having the plate extend out far enough to receive the handle rings. 167 Re-X Q. What plate? A. The bottom plate or box plate."

A. The same meaning.

Cross-examination closed.

GEORGE B. JENKINSON.

Subscribed and sworn to before me this 15th day of May, 1885.

SAMUEL R. BETTS,
U. S. Commissioner, S. D. of N. Y.

Adjourned to new notice.

111 JUNE 9, 1885—120 Broadway.

Met pursuant to notice.

Present: S. H. Steele, Esq., for complainant, and J. E. H. Hyde, Esq., for defendant.

BERNARD CONLAN, a witness produced on the part of defendants, and having been first duly sworn, deposes and says:

1 Q. What is your name, age, residence, and occupation?

A. My name is Bernard Conlan; 45 years old; I reside at 537 Bank street, Newark, New Jersey; I am a manufacturer of fancy brass goods.

2 Q. Have you ever been engaged in the manufacture of trimmings for traveling bags and satchels?

A. Yes, sir; all my lifetime.

3 Q. Please look at the Defendants' Exhibit "Dog's-Head Attachment" and state whether you have ever seen such articles before.

A. Yes, sir.

4 Q. When first and where?

A. I can't say exactly within the year, but it is somewhere between 1866 and 1868. I have made the dies for them.

5 Q. Where was it that you made the dies for such articles?

A. At the factory of Stevens, Roberts & Havell. I worked for them at Newark, N. J.

6 Q. What was Mr. Havell's first name?

A. George Havell.

7 Q. When did you leave the employment of Stevens, Roberts & Havell, and how long had you been with them when you left them?

A. I left Stevens, Roberts & Havell and started business for myself in 1871, the 10th of January. I had been working in their employ 21 years before that. Part of this time I was with James Bishop, who was bought out by Stevens, Roberts & Havell.

112 8 Q. How do you recollect that it was within the years 1866 and 1868 that you made the dies for articles like the exhibit shown you?

A. The way I came at it is that I got married in 1864, and we moved to Washington street, where the factory is now at present, in 1865, and I know it was not over a year or two at the furthest after that that I made those dies.

9 Q. Did you see articles like the "Def'ts' Exhibit Dog's-Head Attachment" struck from the dies that you made while you were with Stevens, Roberts & Havell?

Complainant objects to any testimony of this witness tending to show prior knowledge on the ground that his name is not set up in the answer.

A. Yes, sir.

10 Q. How many, about, such articles were made by Stephens, Roberts & Havell before you left them?

A. Well, we used to cut them out from 25 to 100 gross at a time. I suppose there must have been a couple of hundred gross; maybe a thousand gross, for all I know. I am still making them myself.

11 Q. What were those articles like the "Def'ts' Ex. Dog's-Head Attachment" used for while you were with Stevens, Roberts & Havell?

Complainant's counsel requests defendants' counsel to state whether he expects to prove prior knowledge or prior use of the invention claimed in the patent in suit by this witness, and states that he objects to any testimony of this witness tending to that end upon the ground above stated.

Defendants' counsel replies that he expects to use the testimony of this witness for any purpose for which it is legally competent.

A. Stevens, Roberts & Havell only done the manufacturing
113 of them just as they are, and sold them to those trimmers—such as bagmakers and others, trimmers in that line—such as drawer-pullers.

12 Q. For what purpose did Stevens, Roberts & Havell sell those attachments to bag manufacturers?

Objected to as incompetent.

A. To fasten the handle on the frame, for one purpose.

13 Q. Did you see bags with the handle fastened to the frame by such attachments?

A. Yes, sir; I did. They had quite a run on them at one time.

14 Q. How was the handle fastened to the bag frame by means of such attachments?

A. The D ring put in the notches and the dog's heads riveted on the frame, one on each side, by that means fasten the handle.

15 Q. Did you see more than one bag which had the handle fastened in that way?

A. Yes, sir; most every place I'd go I'd see them in the windows along the streets, and I'd always take notice of the trimmings that was on them specially. For about two years I've seen those used frequently.

16 Q. Do you know whether bags having the handles so attached were sold or not at that time?

A. I've seen them used; that's all I know.

Direct closed.

Cross-examination closed.

B. CONLAN.

Subscribed and sworn to before me this 9th day of June, 1885.

SAM'L R. BETTS,

United States Commissioner, South. Dist. of New York.

Adjourned to Thursday, June 11, at 2 p. m.

114 THURSDAY, *June* 11—2 p. m.

Met pursuant to adjournment.

Present: Counsel as before.

Defendant's counsel states that his case for the defense is closed.

Circuit Court of the United States for the Southern District of New York.

WILLIAM ROEMER, Complainant,
against
THOMAS B. PEDDIE *et al.*, Defendants. } In Equity.

Testimony taken in surrebuttal on the partof the defendants, pursuant to the order of the court of January 8th, 1886, before Samuel R. Betts, United States commissioner.

NEW YORK, *January* 13, 1886—11 a. m.

Met pursuant to notice.

Present: J. E. H. Hyde, Esq., counsel for defendants; Briesen & Steele, counsel for complainant.

115 GUSTAVE BERNHEIM, a witness called on the part of defendants, and having been first duly sworn, deposes and says:

1 Q. What is your name, age, residence, and occupation?

A. Gustave Bernheim; age, 40 years; residence, New York city; I am a manufacturer of and dealer in material for traveling-bag frames.

2 Q. Of what firm are you a member and how long have you been a member of such firm?

A. A member of the firm of R. Neumann & Co., since 1868, and have been with them two years previous as clerk.

3 Q. Have you read the testimony of Mr. William Roemer, the complainant in these cases, taken on the 31st day of October, 1885, in these four cases, and especially that portion of it in which he says that frames for traveling bags and satchels were not made wider than $\frac{3}{4}$ of an inch prior to the year 1880?

A. I have read it.

4 Q. Please say whether that testimony of Mr. Roemer's is true, and give the reasons for any answer which you may make.

Objected to as incompetent.

A. It is not true, because since the latter part of 1870 or the beginning of 1871 R. Neumann & Co. have been making railroad frames, especially for Mr. Roemer under a patent of his dated January, 1871, which were $\frac{7}{8}$ of an inch wide; we made them in large quantities, and in the course of years Mr. Roemer himself used thousands of dozens of them. We made the frames for others, too, but generally without that special feature for which he had a patent.

5 Q. What do you mean by railroad frames?

A. The large frames used on large traveling bags are generally called railroad frames.

6 Q. Please look at the Patent Office copy of the letters patent which I now hand you, being letters patent No. 110,791, of
116 January 3d, 1871, and state whether or not that is the patent to which you referred in your last answer.

A. It is.

Defendants' counsel offers in evidence the patent just shown to the witness, and it is marked Defendants' Exhibit Roemer Patent of January 3, 1871, S. R. B., U. S. commissioner, January 13, 1886.

Objected to as irrelevant and immaterial and as not proper surrebutting evidence, but no objection is made to the use of a Patent Office copy with the same force and effect as if duly certified.

7 Q. Is the William Roemer to whom that patent was granted the same William Roemer who is the complainant in these suits and who has testified therein?

A. He is the same.

8 Q. Can you produce one of those original frames, such as you have made for said William Roemer, as you have testified, during the last thirteen or fourteen years?

A. I can and I do.

Defendants' counsel offers the same in evidence, and it is marked "Def'ts' Ex. Roemer Frame" of January 3, 1871, S. R. B., U. S. commissioner, January 13, 1886.

9 Q. Please measure the frame which you have produced with the measure I now hand you and state how wide it is.

A. It is a frame seven-eighths of an inch wide.

10 Q. Please state whether such frame is wide enough for the use upon it, as an attachment for the handle rings, of such article as "Def'ts' Ex. Dog's-Head Attachment," which I now hand you.

A. They would fit exactly, and I notice that the holes to rivet the dog's head on top of the frames fit exactly the corresponding holes on the frame.

117 11 Q. Please state how long, to your knowledge, your firm of R. Neumann & Co. has had in its possession the bag frame which you have produced this morning.

A. We had it previous to the fall of 1877. How long before I could not tell, but that it was before that time I know by the fact that on or about that time Mr. Roemer failed, and we had those frames on hand and never made any since.

12 Q. When were the rivet holes made in that frame, if you know?

A. We punch the holes before the frame is bent and finished.

13 Q. Was that done in the case of that frame?

A. Undoubtedly.

14 Q. Has anything been done to that frame since 1877?

A. No, sir; this is the frame as I found it in a box containing a lot of old frames similar to this one.

15 Q. How do you know that it was as early as 1871 that you began to make frames like the "Ex. Roemer Frame" of January 3, 1871?

A. I know it, in the first instance, by the date of Roemer's patent, and I have looked at my machinery and stock account of December 31, 1870, where I saw that we had a number of inlays on hand for that frame, and in our stock account of December 31, 1871, I found that we had several hundred dozens of these frames on hand, besides all the tools and machinery to make them. I know, furthermore, that we commenced the manufacturing of frames in 1869, when we made satchel frames only; and about a year after that, when we wanted to make railroad frames, Mr. Roemer, who at that time was a very good friend of ours, advised us to make the style of frames for which he was about taking a patent out instead of the railroad frames generally in use at that time, which were called hoop-iron frames, whilst these frames are made out of sheet iron.

16 Q. Did Mr. Roemer give your firm orders for these frames?

A. He did.

118 17 Q. Were they delivered to him?

A. Certainly.

18 Q. In large or small quantities?

A. In large quantities.

19 Q. You said that you also made frames of similar width, but without the patented feature, for other parties. Can you name any of such other parties?

A. I am sure we delivered them to every bag-maker in Newark.

20 Q. Mr. Roemer has also testified that the "Def'ts' Ex. Dog's-Head Attachment" is not strong enough for use as a handle attachment on bag frames, and is that true?

Objected to as incompetent.

A. It might not be strong enough for the heaviest class of bags, but it is amply strong enough for the large quantity of lighter class of bags which are made.

21 Q. He has also testified that the notches in said Defendants' Exhibit "Dog's-Head Attachment" are not large enough for the handle rings of the bags. Is that true?

Objected to as incompetent.

A. That is not so. They might be smaller yet and still large enough.

Direct closed.

Adjourned to Tuesday, January 19, 11 a. m.

TUESDAY, *January* 19, 1886—11 a. m.

Met pursuant to adjournment.

Present: Counsel as before; also the witness, Gustav Bernheim, for cross-examination.

Cross-examination by Mr. KNAUTH:

119 22 X Q. Is the frame which you have produced on your direct examination one of the railroad frames which you have described in your answer to Q. 4?

Question 4 and answer read to witness.

A. It is.

23 X Q. Are the railroad frames the only style of frames which you can produce which were made wider than three-quarters of an inch prior to 1880?

A. I am not positive about that. I would have to refer to my frames first and see what we made.

24 X Q. You do not recollect any others at present, or do you?

A. I know we made other frames wider than three-quarters of an inch, but I am not positive about the date.

25 X Q. Did you ever use in connection with such railroad frames any attachments like "Def'ts' Ex. Dog's-Head Attachment" or "Def'ts' Ex. Dog's Head" accompanying Chapman letter of November 2d, 1885?

A. We only sold the frames and the locks and no trimmings at all. Bag-makers put their own trimmings on the frames and we never minded which they were.

26 X Q. Then you have never seen any of those railroad frames which have attachments like those described in my last question?

A. I don't remember whether I did or not.

27 X Q. Are you not interested against this complainant or his patent which is in suit here?

A. I am.

28 X Q. Have you any arrangement with the defendants in this case concerning the defense of the case, either pecuniarily or in any other manner?

A. Five different parties, the four parties whose suits are going on now and ourselves, were sued by Mr. Roemer, and we all put our cases in the hands of Mr. Betts.

29 X Q. What do you mean by five different parties?

A. Well, there are suits pending—Roemer *vs.* Headley,
120 Roemer *vs.* Peddie, Roemer *vs.* Jenkinson, Roemer *vs.* Kupper, and Roemer *vs.* R. Newmann & Co. That is what I mean by five different parties.

30 X Q. What arrangement, if any, did you make with the other defendants in these cases or with any one of them concerning the payment of costs or of damages in case of a decree in favor of the complainant?

Objected to as incompetent, and the witness is instructed not to answer the question.

A. According to advice of counsel I decline to answer.

31 X Q. You have not answered yet my 28th question. Please answer the same definitely.

Objected to as fully answered, and the witness is instructed that he need not enter into details of private matters which can have no bearing on the questions at issue.

(28 Q. and answer read to witness.)

A. According to advice of counsel I refuse to say anything further.

Complainant's counsel calls the attention of the court to this arbitrary proceeding, and, in view of the instructions of defendants' counsel and the refusal of the witness to answer the questions 30 and 31, he gives notice that he will move the court at the next opportunity therefor for an order compelling the witness to answer said questions.

32 X Q. Is your interest in this cause a pecuniary interest?

A. In these four causes which are trying now I have got no pecuniary interest at all; in my own case, of course, I have.

33 X Q. Are you not selling locks or frames having locks to the defendants in these four suits—I mean such frames or locks
121 as are brought forward by the complainants as an alleged infringement upon complainant's patent here in suit?

Objected to as not cross-examination, and the witness is instructed not to answer the question.

A. According to advice of counsel I refuse to answer the question.

34 X Q. Have you made any arrangement whatever with either of the four defendants, Jenkinson, Hupper, Headley, or Peddie, that you would consider yourself responsible pecuniarily for any locks

which they buy from you and upon which they might be sued for infringement of the patent in suit?

A. None whatever.

35 X Q. Are you willing to swear that you have given them no assurances whatever upon this point, either verbally or in writing?

Objected to as already answered.

A. I am.

36 X Q. What is your interest in this suit, then?

A. I think I said before that I have no direct interest in these four suits at all, but only in the suit against R. Neumann & Co.

37 X Q. Do you know which patent of the complainant is in suit here?

A. I do.

38 X Q. Are you interested against that patent?

Objected to as fully answered and explained by the witness.

A. I stated before that the firm of which I am a member is sued under this patent, and we are certainly interested in the patent.

39 X Q. Then the suit which is brought against you is
122 analogous to the suits brought against the other four defendants, and you put your case in the hands of Mr. Betts jointly with other defendants?

A. Yes, sir.

40 X Q. Are you defending your suit?

A. I believe we are.

41 X Q. Did you ever confer with the defendants in the other four suits about the means and methods of defense, after the suits were started by Mr. Roemer?

A. I believe I did with one or two of them.

42 X Q. Were you under any apprehension that they might fall back upon you in case the suit might go against them?

Objected to as incompetent and no reason for such apprehension has been shown, and as not cross-examination.

A. Since the preliminary decision of Judge Wheeler in this suit I am not under the slightest apprehension whatever as to the final result.

43 X Q. How was it before the decision of Judge Wheeler?

Same objection.

A. Personally I felt just as confident about the result as I do now.

44 X Q. You seem not to have understood my 42d question; I ask you to state whether you were under any apprehension that the other defendants might fall back upon you before Judge Wheeler had given his decision?

Same objection and as already answered.

A. I think I answered the question by saying that I felt just as confident before said decision as after.

45 X Q. Do you mean that you regarded the complainant's
123 case as so untenable that you had no fear that the defendants, after being beaten, might make claims against you, to hold them harmless?

Objected to as not cross-examination, and the witness is instructed that he need not disclose his relations with the other defendants in these five suits.

A. In regard to the first part of the question I think complainant has a hopeless case; in regard to the second part I am advised by counsel not to put in any answer.

In view of the witness' answer complainant's counsel gives the same notice of motion as given by him immediately after the answer to X Q. 31, and refuses to further cross-examine the witness before said motion shall be decided.

Counsel for defendant asks complainant's counsel if he has any further cross-questions to put to the witness other than those which he has not answered, and that if not he now gives notice that he will refuse to produce the witness again unless ordered to do so by the court.

Complainant's counsel answers that he is unable to proceed with the cross-examination unless the witness answers the questions which he was instructed not to answer.

Redirect by Mr. HYDE:

46 Red. Q. Has either side taken any testimony in the suit which Mr. Roemer has brought against your firm of R. Neumann & Co. on the same patent on which these four suits are brought?

A. Not to my knowledge.

47 Red. Q. And is that suit brought for the alleged infringement of that patent?

A. It is.

Redirect closed.

124 Recross:

48 Re-X Q. Did you sign a circular jointly with the defendants in the other four cases, informing the trade that you would defend suits brought by Mr. Roemer on any of his patents?

A. I signed circulars with the other defendants, stating that we would defend suits brought by Mr. Roemer against parties using locks which we made at that time and which Mr. Roemer claims to be infringements on this particular patent in this suit.

49 Re-X Q. Was that the style of lock which is claimed to be an infringement here?

Objected to as indefinite.

A. None of the locks claimed to be infringements in the four suits just now on trial are locks made by my firm; of course we want to defend only such suits as may be brought against parties using our locks.

50 Re-X Q. Did you pay a joint retainer with the other defendants in the four suits to Mr. Betts or his firm to defend the cases?

Objected to as incompetent and not cross-examination, and the witness is instructed he need not answer the question.

A. By advice of counsel I decline to answer.

51 Re-X Q. Have you paid any part of the expense of the defense of the four suits brought by Mr. Roemer simultaneously with your suits against the four other defendants?

Same objection and instruction.

A. (Same answer.)

Complainant's counsel gives the same notice of motion with reference to Re-X Q. 50 and 51 which he gave on the record im-
125 mediately subsequent to the answer to X Q. 31, and adds that he will make said motion upon the record in this case, without giving further notice to defendants' counsel, on Friday, January 29, 1886.

GUSTAV BERNHEIM.

Subscribed and sworn to before me this 19th day of January, 1886.

SAM'L R. BETTS,
United States Comm'r, S. D. of N. Y.

Adjourned to Monday, January 25, 1886, 11 a. m.

Complainant's counsel objects to any adjournment of the examination to a day previous to the hearing of the motion noticed by him on the record and to any taking of testimony before the testimony of this witness will have been concluded.

MONDAY, *January* 25, 1886—11 a. m.

Met pursuant to adjournment.

Adjourned to Tuesday, February 2, at 11 a. m.

TUESDAY, *February* 2, 1886—11 a. m.

Met pursuant to adjournment.

Present: Counsel as before.

In view of the decision of the motion to compel the witness to answer certain questions on the record, complainant's counsel now repeats 30 X Q.:

126 30 X Q. (Repeated). What arrangement, if any, did you make with the other defendants in these cases or with any one of them concerning the payment of costs or of damages in case of a decree in favor of the complainant?

A. We have made no arrangements whatever.

Counsel for defendants states that the witness is ready to answer the 31st X Q., but that complainant's counsel says that he does not care for an answer.

Complainant's counsel denies this and asks X Q. 31.

31 X Q. (Repeated). You have not answered yet my 28th question; please answer the same definitely.

28 X Q. and answer read to the witness.

A. Each of the defendants in the four cases mentioned and my firm pays its own share of the expenses for the defense of the case in which the respective defendants are interested.

33 X Q. (Repeated). Are you not selling locks or frames having locks to the defendants in these four suits—I mean such frames or locks as are brought forward by the complainant as an alleged infringement upon complainant's patent here in suit?

A. None of the locks on which the four defendants are sued were made or sold by the firm with which I am connected.

51 X Q. (Repeated). Have you paid any part of the expense of the defense of the four suits brought by Mr. Roemer simultaneously with your suit against the four other defendants?

A. When those four defendants and ourselves put all our cases in the hands of Mr. Betts we agreed that each one would pay a share of the whole expenses, our idea being that it would be cheaper to put all cases in the hands of one lawyer and pay a share of
127 the expenses than to make a separate case for each defendant.

Complainant's counsel states that he is informed by his client that he (Mr. Roemer) was mistaken when he stated in his testimony that frames for traveling bags were not made wider than ¾ of an inch prior to the year 1880, and in accordance with the request of his client complainant's counsel hereby makes this admission on the record.

Defendants' counsel asks complainant's counsel if he also admits that the testimony of the witness Bernheim in regard to the manufacture of frames like the Defendants' Exhibit Roemer Frame, of January 3, 1871, by the firm of R. Neumann & Co. and their delivery to the complainant as testified is true.

Complainant's counsel cannot make the admission requested of him, but for the purpose of expediting the case he will admit at the hearing that frames like the "Defendants' Exhibit Roemer Frame," of January 3, 1871, were known prior to 1877, and were known to the complainant prior to 1877.

GUSTAV BERNHIEM.

Subscribed and sworn to before me this 2d day of February, 1886.

SAMUEL R. BETTS,
United States Commissioner, South. District of New York.

Defendants' case closed.

128 DEFENDANTS' EXHIBIT DOG'S-HEAD BILL No. 1. S. R. B., U. S. Comm'r. April 27, 1885.

NEWARK, N. J., *Aug't 26th*, 1870.

All claims for deduction must be made within ten days after receipt of bill.

Mr. T. B. Peddie bought of Stevens, Roberts & Havell, manufacturers of fancy steel and brass goods, patented articles and models, button hooks, satchel and bag frames, trunk and bag trimmings, steel buttons, belt clasps, shoe and hat slides, and buckles, &c., 284 & 286 Washington street.

Terms: Net cash on demandt.

2 gro. No. 11 gilt dog's head & ring, 3.75	$7	50
5 %		37
	$7	13

DEF'TS' EXHIBIT DOG'S-HEAD BILL No. 2. S. R. B., U. S. Comm'r. April 27, 1885.

All claims for deductions must be made within ten days after receipt of goods.

NEWARK, N. J., *Sept.* 6, 1875.

Messrs. T. B. Peddie & Co. bought of Stevens, Roberts & Havell, manufacturers of fancy steel and brass goods, patented articles and models, button hooks, satchel & bag frames, trunk & bag trimmings, steel buttons, belt clasps, shoe & hat slides, & buckles, &c., 284 & 286 Washington St.

Terms: Net cash on demand.

1 gro. 11 D. rings, nick'l	$	90
1 " 11 doz. head "	2	15
	$3	05

129 DEFENDANTS' EXHIBIT DOG'S-HEAD BILL No. 3. S. R. B., U. S. Comm'r. April 27, 1885.

NEWARK, N. J., *Nov.* 3, 1876.

All claims for deductions must be made within ten days after receipt of goods.

Messrs. T. B. Peddie & Co. bought of Roberts & Havell, manufacturers of metal fancy goods, 284 & 286 Washington street.

Terms: Nett cash on demand.

10 " 17 x ½ S. P. 46	$4 60		
25 %	1 15		
			$3 45
1 gro. nic. dog head			2
1 " 13 nic. D ring			70
1 " 3 jap. corner			2 90
1 " 4 " "			3
			$12 05

O. K.
Rec'd p.

130 DEF'TS' EXHIBIT CHAPMAN LETTER. S. R. B., U. S. Comm'r. Nov. 5, 1885.

Office of T. B. Peddie & Co., manufacturers of ladies' and gents' trunks, portmanteaus, and traveling bags; salesroom, No. 77 Chambers St., New York.

NEWARK, N. J., *Nov.* 2*d*, 1885.

Messrs. Betts, Atterbury & Betts, 120 Broadway, New York.

DEAR SIRS: Yours of the 31st ult. is at hand. If I understand your request, you want the dog head without the notches in the sides and with legs to attach it to the bag or other article. They are out of use at the present time and I cannot get one to show you, but in their place are used the same pattern exactly, but having holes pierced in each end to pass a rivet through to fasten them to the article.

Yours resp'y, R. W. CHAPMAN.

I send you sample of the article I have reference to. Kindly bear in mind my request that you send me copy of testimony when printed, &c.

And oblige, C.

131 UNITED STATES PATENT OFFICE.

WILLIAM ROEMER, of Newark, New Jersey.

Letters Patent No. 110,791, dated January 3, 1871.

Improvement in Frames for Traveling-Bags, &c.

The schedule referred to in these Letters Patent and making part of the same.

To all whom it may concern:

Be it known that I, William Roemer, of Newark, in the county of Essex and State of New Jersey, have invented certain improvements in frames for valises or traveling-bags, of which the following is a specification.

In the accompanying drawing—

Figure I represents an inside view of the frame when open.

W. SIMON.

TRAVELING-BAG

No. 177,020 Patented May 2, 1876.

No 120.
Kormer
Peddicord
} pl. 133

Fig. 1.

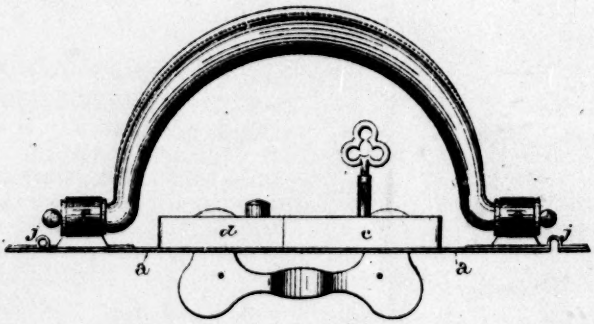


Fig. 2.

WITNESSES.

J. W. McGarner
Miller & Gibbons.

INVENTOR.

Wm Simon
per
F. A. Lehmann, Atty

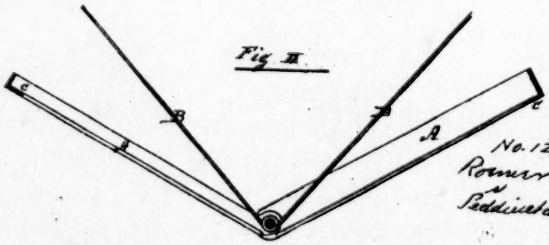
W. Roemer,

Traveling Bag.

No. 110791. Patented Jan. 3. 1871.

132

Fig II.



No. 120.
Roemer
et
Seddinetal
} # 132

Fig. I.

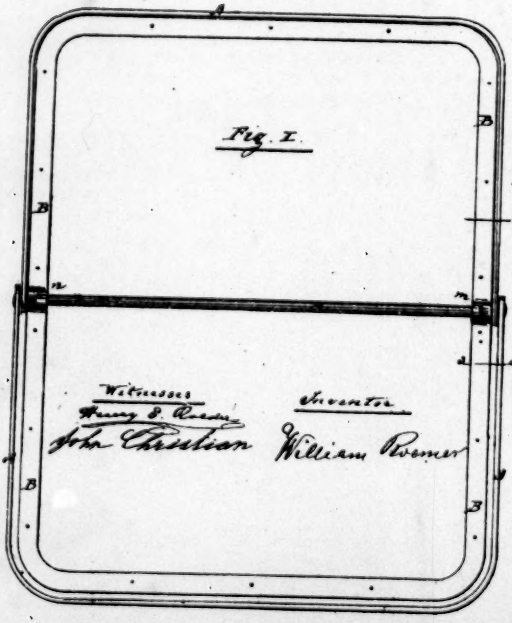


Fig III.

Fig IV

Witnesses
Henry B. Rossiter
John Christian

Inventor
William Roemer

Figure II is a section of the same.
Figure III is a section at line 1–2.
Figure IV is a section at line 3–4.
Similar letters represent similar parts.

The nature of my invention consists in the combination of a hinged inlay with a pressed or stamped hinged frame, between which the material forming the bag or valise can be placed, and riveting the whole together.

A A are the two sides forming the frame, which may be either pressed or stamped, and are hinged together upon the bolt *a*, passing the whole length of the frame from one side to the other side, in the usual manner.

B B are the inlays, fitting into the frames A A, and hinged on the same bolt, *a*, on which the frames A are hinged, as shown at *n* and *m*, Fig. 1.

Instead of forming the hinges on the inlays, the same may be made separate and riveted to said inlays.

The material used for forming the bag or valise is attached to the inlays in the usual manner, so as to come between said inlays B and the sides C of the frames A, and the inlays are then riveted to the frames A, firmly securing the material between the same.

By this arrangement of hinging the inlays on the same bolt, *a*, on which the frames A are hinged, and then securing the inlays and frames together by rivets or otherwise, a much stronger frame is obtained than is the case when only the frames A are hinged on the bolt.

I am aware that body-bands of large frames, being generally called railroad-frames, have been hinged to the bolt at the inner sides, and the outer side attached by means of iron ears riveted to the body-band, on which the material is fastened; also am I aware that pressed frames, generally called "French frames," have been made, with loose inlays, and then the material riveted between the outside frame and the inlay, and therefore do not claim either of them; but

What I claim as my invention, and desire to secure by letters patent, is—

In combination with a hinged flange frame, a hinged inlay lying parallel with and riveted or otherwise fastened to the side flange of the frame, substantially as and for the purpose herein specified.

WILLIAM ROEMER.

Witnesses:
HENRY E. ROEDER.
JOHN CHRISTIAN.

(Here follow diagrams marked pages 132 and 133.)

134 UNITED STATES PATENT OFFICE.

WILLIAM SIMON, of Newark, New Jersey.

Improvement in Traveling-Bags.

Specification forming part of Letters Patent No. 177,020, dated May 2, 1876; application filed April 12, 1876.

To all whom it may concern:

Be it known that I, William Simon, of Newark, in the county of Essex and State of New Jersey, have invented certain new and useful improvements in traveling-bag; and I do hereby declare the following to be a full, clear, and exact description of the invention, such as will enable others skilled in the art to which it pertains to make and use it, reference being had to the accompanying drawings, which form part of this specification.

My invention relates to an improvement in traveling bags and satchels; and it consists, first, in placing the lock, fastening, and ring-loops all upon a single plate, and thereby dispensing with so many different fastenings; second, in the manner of striking up the lock-plate, so as to form recesses to receive the ring-loops, whereby they are held more firmly and securely in position.

The accompanying drawings represent my invention.

a represents the lock-plate, which, instead of being made just long enough to receive the lock *c* alone, as is usual, is here made long enough to receive the lock, fastening *d*, and ring-loops *e* all together. By this means all these parts can be attached to the frame of the bag or satchel at once, thereby dispensing with a large number of rivets or other fastenings, and saving much time and labor.

The lock, fastening, and ring-loops may be of any construction desired, as they form no part of this invention.

Just beyond the ends of both the lock and fastening the lock-plate *a* is struck up from below, so as to form a concavity or recess, *i*, on top of the plate, to receive the ring-loops. These rings, being thus braced in position against side motion, and prevented from moving by the clinches *o*, which pass down through slots in the plate *a*, are held more firmly and securely in position than they can be in any other manner.

It will be readily seen by the above-described construction that but two rivets at each end of the lock-plate will serve to securely fasten all four parts to the bag-frame, thereby serving to dispense with so much skilled labor, and to prevent the weakening of the frame.

Cross-creases *j* are also struck up in the plate *a*, to receive rings or other suitable devices for fastening the carrying-strap to.

Having thus described my invention, I claim—

1. In traveling-bags or satchels, a lock-plate, having secured to it the lock-fastening and ring-loops, substantially as shown.

2. The lock-plate *a*, having the recesses *i* formed in or on its surface to receive the ring-loops, substantially as described.

3. In combination with the plate *a*, a lock and a fastening device, all secured together in the manner described, and adapted to be fastened to the bag-frame, substantially as set forth.

In testimony that I claim the foregoing I have hereunto set my hand and seal this 6th day of April, 1876.

WILLIAM SIMON. [L. S.]

Witnesses:
MAX MARENSE.
FRED. WM. FELDMAN.

135 Circuit Court of the United States, Southern District of New York.

WILLIAM ROEMER
vs.
T. B. PEDDIE & Co. } In Equity.

On motion of complainant's counsel and after hearing counsel for both parties, ordered that the questions and answers numbered 75 and 81 in the redirect examination of the witness, R. W. Chapman, propounded and answered May 5, 1885, be stricken from the record. Leave is given defendant to recall said witness Chapman. As to other questions the motion is denied.

(Signed) WM. J. WALLACE.

(Endorsed:) Circuit court of the U. S., south. dist. of New York. Roemer *vs.* Peddie. Order as to deposition of Chapman. U. S. circuit court. Filed May 9, 1885. Timothy Griffith, clerk.

136 United States Circuit Court, Southern District of New York.

WILLIAM ROEMER
vs.
THOMAS B. PEDDIE *et al.* } In Equity.

This patent was held valid in Roemer *vs.* Simon, 20 Fed. Rep., 197. No good reason for changing that conclusion has been made to appear, and it is followed now. The only question left is whether the defendants infringe. The improvement patented consists essentially in extending the sides of the lock case to hold the handle rings of traveling bags. The bottom plate of the lock had before been extended for that purpose. By the improvement the bottom plate could be dispensed with and the side walls of the lock case made both to enclose the lock and hold the handle rings. The defendants use the same thing to hold the handle rings, but place the lock above it and do not use it for the side walls of the lock case.

137 It becomes, by the use which they make of it, an extended bottom plate to the lock of an improved form. If this piece was patented and the patent is valid to cover it, the defendants do infringe. The file-wrapper and contents are made a part of the case. From them it appears that the orator in his application for this patent at first applied for a patent covering the combi-

nation of the lock case with the handle rings. His claim was rejected on a reference to patent No. 177,020, granted to William Simon, which covered and extended bottom plate to the lock to hold the handles. The claim was amended and again rejected on the same reference, and was not granted until the specification was amended to dispense with an extended bottom plate to the lock, and the claim was confined to a lock case with notched sides near its ends to receive and hold the handle rings. This piece which the defendants use was the same before as after these amendments. The Patent Office would not grant a patent for it generally in combination with the handle rings, but only specifically when used
138 for the sides of the lock case and for the handle rings. The orator accepted the patent narrowed in that manner, and cannot now be heard to claim that it is any more broad than that in its scope.

He invented this particular form of lock case, and his patent is for that only, and it cannot be construed to cover anything else. Railway Co. *vs.* Sayles, 97 U. S., 554. The defendants do not use his lock case, but use an extended bottom plate like his lock case. It has been argued ingeniously and with plausibility that the same thing is used under a merely different name; but this argument is not in reality well founded. The patent was for a lock case not only in name but in substance. The defendants do not use this lock case. They evade the patent not by a mere colorable, but by a substantial evasion.

Let decrees be entered that the defendants do not infringe and that the bill be dismissed with costs.

HOYT H. WHEELER.

139 Sanford H. Steele, for orator.
J. E. Hindon Hyde, for defendants.

(Endorsed:) Circuit court of the United States for the southern district of New York. William Roemer *vs.* Thomas B. Peddie *et al.* Decision. Wheeler, J. U. S. circuit court. Filed June 3, 1886. Timothy Griffith, clerk.

140 At a stated term of the circuit court of the United States held in and for the southern district of New York, in the city of New York, on the 8th day of June, 1886.

Present: Hon. Hoyt H. Wheeler, district judge.

WILLIAM ROEMER
vs.
THOMAS B. PEDDIE and GEORGE B. JENKINSON. } In Equity.

This cause having come on to be heard at a February term of this court upon the pleadings, proceedings, and proofs, after hearing counsel for the respective parties and after due proceedings had, it is, upon consideration, ordered, adjudged, and decreed—

That the bill of complaint herein be, and the same hereby is, dismissed, and that the defendants do recover of the complainant the

costs of this suit, to be taxed, and that the defendants have execution therefor.

(S'g'd) HOYT H. WHEELER.

141 (Endorsed:) U. S. circuit court, southern district of New York. William Roemer *vs.* Thomas B. Peddie and George B. Jenkinson. Decree. Betts, Atterbury & Betts, solicitors for the def'ts, 120 Broadway, N. Y. city.

(File-mark:) U. S. circuit court. Filed June 8, 1886. Timothy Griffith, clerk.

142 Circuit Court of the United States for the Southern District of New York.

WILLIAM ROEMER
vs.
THOMAS B. PEDDIE and GEORGE B. JENKINSON. } In Equity.

It is hereby stipulated that the foregoing papers shall constitute the record to be sent by the clerk of the circuit court of the United States for the southern district of New York to the U. S. Supreme Court on the appeal to said Supreme Court in the above-entitled cause, and that the exhibits be retained by the clerk of said circuit court until the hearing of the appeal in the Supreme Court. The foregoing stipulation is made without prejudice to any motion hereafter to be made to correct said record.

New York, Sept. 6th, 1886.

(S'g'd) BETTS, ATTERBURY & BETTS,
Def'ts' Sol'rs.

(S'g'd) BRIESEN & STEELE, *Compl't's Sol'rs.*

(Endorsed:) U. S. circuit court. Filed Sept. 14, 1886. Timothy Griffith, clerk.

143 Circuit Court of the United States for the Southern District of New York, Second Circuit.

WILLIAM ROEMER, Complainant and Appellant,
vs.
THOMAS B. PEDDIE and GEORGE B. JENKINSON, Doing Business as Copartners under the Firm Name and Style of T. B. Peddie & Co., Defendants and Appellees. } In Equity.

To the honorable the Supreme Court of the United States:

The appeal of William Roemer, complainant and appellant above named, respectfully showeth that upon the 16th day of July, 1884, the above-named complainant filed his bill of complaint in the circuit court of the United States for the southern district of New York, in the second circuit, against the above-named defendants and appellees, Thomas B. Peddie and George B. Jenkinson, doing business as copartners under the firm name and style of T. B.
144 Peddie & Co., in a suit in equity, alleging that said defendants had infringed the rights of the complainant therein as secured

to him by letters patent granted, on the 18th day of September, 1877, to him and numbered 195,233, and praying for an accounting and payment to the complainant by the said defendants of the profits by them realized and of the damages suffered by said William Roemer, complainant and appellant, by reason of said infringement of said letters patent, and also that writs of subpœna and of injunction might be issued against said defendants, their clerks, agents, servants, workmen, &c.

This complainant and appellant further showeth that pursuant to said prayer a *subpœna ad respondendum* issued out of and under the seal of said circuit court, and was duly served on said defendants, Thomas B. Peddie and George B. Jenkinson.

This complainant and appellant further showeth that thereafter said defendants, Thomas B. Peddie and George B. Jenkinson, appeared and answered said bill of complaint by filing their answer, and among other things they therein denied the validity of
145 said letters patent and denied that they infringed the same; that a general replication was filed thereto, and, issue being thus joined, testimony was taken and such proceedings were had that on the 4th day of June, 1886, the said circuit court directed that a decree be entered dismissing said bill of complaint, and on the 8th day of June, 1886, a final decree was entered in said circuit court, wherein it was in substance adjudged and decreed that the said bill of complaint be dismissed with costs to the defendants, Thomas B. Peddie and George B. Jenkinson, that were subsequently taxed at $108.27, which said decree is, as the appellant is advised, erroneous and ought to be reversed.

Wherefore this appellant appeals from the whole of said decree of said circuit court to the Supreme Court of the United States, and respectfully prays that the decree of said circuit court, together with the bill of complaint, answer, replication, pleadings, depositions, evidence, and exhibits and proceedings in said cause, may be
146 sent to the Supreme Court of the United States without delay, and that the said Supreme Court will proceed to hear the said cause anew, and that the said decree of the said circuit court and every part thereof may be reversed with costs and the complainant may be given the relief prayed for in his bill of complaint or such other decree made as the Supreme Court shall deem just.

(S'g'd) BRIESEN & STEELE,
Solicitors for Appellants.

A. v. BRIESEN, *Of Counsel.*

Appeal allowed August 22, 1886.
(S'g'd) ADDISON BROWN.

(Endorsed:) U. S. circuit c't, S. dist. N. Y. Wm. Roemer *vs.* T. B. Peddie *et al.* Appeal. Briesen & Steele, appellant's sol'rs, 229 Broadway, New York. U. S. circuit court. Filed Aug. 24, 1886. Timothy Griffith, clerk.

147 Circuit Court of the United States for the Southern District of New York, Second Circuit.

WILLIAM ROEMER, Complainant and Appellant,
vs.
THOMAS B. PEDDIE and GEORGE B. JENKINSON, Doing Business as Copartners under the Firm Name and Style of T. B. Peddie & Co., Defendants and Appellees. } In Equity.

Know all men by these presents that we, William Roemer, of the city of Newark, in the county of Essex and State of New Jersey, and George L. Rose, of the city, county, and State aforesaid, are held and firmly bound unto the above-named Thomas B. Peddie and George B. Jenkinson in the sum of two hundred and twenty-five dollars, to be paid to the said Thomas B. Peddie and George B. Jenkinson; for the payment of which, well and truly to be made, we bind ourselves and each of us, our and each of our heirs, executors, and ad-
148 ministrators, jointly and severally, firmly by these presents.

Sealed with our seals and dated the twentieth day of August, in the year of our Lord one thousand eight hundred and eighty-six.

Whereas the above-named William Roemer has prosecuted an appeal to the Supreme Court of the United States to reverse the final decree rendered in the above-entitled suit by the judge of the circuit court of the United States for the southern district of New York:

Now, therefore, the condition of this obligation is such that if the above-named William Roemer shall prosecute his appeal to effect and answer all damages and costs if he shall fail to make his plea good, then this obligation shall be void; otherwise the same shall be and remain in full force and virtue.

WILLIAM ROEMER. [L. S.]
GEO. L. ROSE. [L. S.]

Sealed and delivered and taken and acknowledged this 20th day of August, 1886, before me—

(S'g'd) JOHN A. SHIELDS,
U. S. Comm'r, S. D. N. Y.

149 UNITED STATES OF AMERICA, } ss:
Southern District of New York, }

George L. Rose, above named, being duly sworn, doth depose and say that he is a freeholder within the city of New York, county and State of New York, and that he is worth the sum of four hundred and fifty dollars over and above all his just debts and liabilities.

(S'g'd) GEO. L. ROSE.

Sworn to this 20th day of August, A. D. 1886, before me—

(S'g'd) JOHN A. SHIELDS,
U. S. Comm'r, S. D. N. Y.

I certify that I have made diligent inquiry as to the sufficiency of the above sureties and am satisfied that they are abundantly good for the amount of this bond.

(S'g'd) JOHN A. SHIELDS,
U. S. Commissioner.

The above bond is approved.
Dated August 22, 1886.
(Signed) ADDISON BROWN.

150 (Endorsed :) U. S. circuit court, southern dist. of N. Y. Wm. Roemer *vs.* T. B. Peddie *et al.* Bond. U. S. circuit court. Filed Aug. 24, 1886. Timothy Griffith, clerk.

151 Circuit Court of the United States for the Southern District of New York, Second Circuit.

WILLIAM ROEMER, Complainant and Appellant,
vs.
THOMAS B. PEDDIE and GEORGE B. JENKINSON, Doing Business as Copartners under the Firm Name and Style of T. B. Peddie & Co., Defendants and Appellee-. } In Equity.

By the Honorable Addison Brown, judge, to Thomas B. Peddie and George B. Jenkinson :

Whereas William Roemer has lately appealed to the Supreme Court of the United States from a decree rendered in the circuit court of the United States for the southern district of New York made in favor of you, the said Thomas B. Peddie and George B. Jenkinson, and has filed the security required by law :

152 You are therefore hereby cited to appear before the said Supreme Court, at the city of Washington, on the second Monday of October next, to do in the matter of said appeal what may remain to justice to be done in the premises.

Given under my hand, at the city of New York, in the southern district of New York, in the second circuit, the 23rd day of August, in the year of our Lord one thousand eight hundred and eighty-six.

(S'g'd) ADDISON BROWN,
U. S. Dist. Judge.

(Endorsed :) U. S. circuit c't, S. dist. N. Y. Wm. Roemer *vs.* T. B. Peddie *et al.* Citation. Briesen & Steele, appellant's solicitors, 229 Broadway, New York. Service of a copy of the within copy — citation is hereby admitted. (S'g'd) Betts, Atterbury & Betts, resp't's sol'rs. Aug. 24, '86. U. S. circuit court. Filed Aug. 24, 1886. Timothy Griffith, clerk.

153 UNITED STATES OF AMERICA, *Southern District of New York,* } ss:

I, Timothy Griffith, clerk of the circuit court of the United States of America for the southern district of New York, in the second circuit, do hereby certify that the foregoing pages, numbered from one to one hundred and fifty-two, inclusive, contain a true and complete transcript of the record and proceedings had in said court in the case of William Roemer, complainant, against Thomas B. Peddie and George B. Jenkinson, defendants, as the same remain of record and on file in said office.

Seal of U. S. Circuit Court, South. Dist. New York.

In testimony whereof I have caused the seal of the said court to be hereunto affixed, at the city of New York, in the southern district of New York, in the second circuit, this thirtieth day of September, in the year of our Lord one thousand eight hundred and eighty-six, and of the Independence of the said United States the one hundred and eleventh.

TIMOTHY GRIFFITH, *Clerk.*

Endorsed on cover: S. New York C. C. U. S. No. 120. William Roemer, appellant, *vs.* Thomas B. Peddie and George B. Jenkinson. Filed October 5, 1886.